STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

BRIEF ON EXCEPTIONS OF

THE ENVIRONMENTAL LAW & POLICY CENTER

Bradley Klein
Senior Attorney
ENVIRONMENTAL LAW & POLICY CENTER
35 E Wacker Drive, Suite 1600
Chicago, IL 60601
bklein@elpc.org

November 20, 2015

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

BRIEF ON EXCEPTIONS OF THE ENVIRONMENTAL LAW & POLICY CENTER

The Environmental Law & Policy Center ("ELPC"), in reference to the Proposed Order filed November 13, 2015, respectfully submits its Brief on Exceptions in the above-captioned matter.

I. Introduction

ELPC's BOE addresses the Proposed Order's resolution of two issues related to the IPA's procurement of distributed generation ("DG") resources and inclusion of energy efficiency programs to its Procurement Plan: (1) whether the IPA should expand its proposed procurement of DG resources; and (2) whether to exclude two of Ameren's energy efficiency programs from the Plan when a utility asserts that the cost of these programs exceeds the cost of electric supply. As discussed below, ELPC urges the Commission to reject the Proposed Order's conclusions on these points.

II. Renewable Energy Section

ELPC respectfully takes exception to the Proposed Order filed November 13, 2015, which denies ELPC's request for the Illinois Power Agency ("IPA") to consider expanding its proposed procurement of distributed generation ("DG") resources in early 2016 in order to leverage expiring federal tax credits to benefit Illinois customers. *See* Proposed Order at pp. 108-115.

The Federal Investment Tax Credit (ITC) provides a 30% tax credit for investment in solar facilities that are placed in service by December 31, 2016. After 2016, the ITC drops to 10% for commercial solar facilities and expires completely for residential projects. The expiration of the ITC will increase the IPA's costs to procure solar resources. All else being equal, a procurement plan that maximizes the proportion of the distributed generation ("DG") renewable energy credits ("RECs") procured in 2016 (as opposed to waiting until future years) will result in a lower overall cost.

The IPA has proposed a conservative DG procurement strategy that "minimizes any possible switching risk." *See* Proposed Order at 115. However, there are other relevant risks. If the IPA's DG procurement strategy is too conservative, then it will forego the opportunity to procure DG RECs in 2016 when federal tax credits are available, meaning that future procurements will be more expensive. ELPC suggested that the IPA attempt to "strike a balance" between the risk of budget volatility related to customer switching and the risk that could result from an overly conservative procurement strategy. (ELPC Objection at 4).

ELPC believes the record supports a larger DG procurement. The 2016 IPA Procurement Plan estimates that nearly $20 million or more will be available under the Renewable Resources Budget ("RRB") in each of the next five (5) delivery years under current sales forecasts.[1] The IPA correctly points out that these budget projections are dependent on future customer switching trends and that an increased trend in municipal aggregation would reduce the amount

[1] *See* 2016 IPA Procurement Plan, Tables 8-4, 8-5, and 8-6 at pp. 132-33.

of the RRB in future years. (IPA Response to Objections at 22). However, the IPA acknowledges that even under ComEd's "low load forecast scenario," there would still be sufficient resources available in the RRB to meet all existing contractual obligations. Under these circumstances, it appears that additional resources could be allocated to DG resources while accommodating the IPA's goal to manage and minimize customer switching risk.

The Proposed Order does not accurately restate ELPC's position. It states that ELPC proposes a procurement strategy that would use the Renewable Resources Budget (RRB) to "acquire 100% of the forecasted DG shortfall" using the RRB through the 2020-2021 delivery time period. *See* Proposed Order at 114. ELPC did suggest that the IPA *consider* this option[2]; however, ELPC also made clear this is not the *only* option. As ELPC explains in its Reply Comments, the IPA could also consider a number of other scaled-back proposals that would still enable more distributed solar procurement to occur while holding customer switching risk to an acceptable minimum. (ELPC Reply Comments at 2). ELPC is simply advocating for the IPA to find the correct balance. ELPC's view therefore requires consideration of the use of the RRB to procure DG RECs in 2016 in an amount greater than zero. (ELPC Reply Comments at 3).

The Proposed Order also cites Ameren's argument that "the recent DG procurement only resulted in one contract, and the administrative costs and efforts to run an expanded procurement do not seem to be justified." *See* Proposed Order at 115. ELPC respectfully disagrees. The IPA continues to gain more experience administering procurement events for distributed resources, and its November 2015 distributed solar procurement was very successful. It is likely that future DG procurements will be similarly successful and the "administrative costs and efforts" associated with those procurements will continue to fall.

[2] ELPC Objection at 4.

For the foregoing reasons, ELPC respectfully recommends that the Commission Order the IPA to allocate additional resources towards DG procurement in early 2016. In doing so, the IPA should be ordered to strike a balance between the risk of budget volatility related to customer switching and the risk that could result from an overly conservative procurement strategy.

Suggested Replacement Language

ELPC respectfully requests the Commission to revise Section (IV)(B)(10)(f), beginning on page 110 of the Proposed Order as follows:

> **f. Commission Analysis and Conclusion**
>
> Both ELPC and the Renewables Suppliers recommend that the IPA should expand DG REC procurements in 2016 using available RRB and ACP funds collected from real time pricing customers. ELPC proposes using these funds to expand this procurement <u>to enable more distributed solar procurement to occur in 2016</u>.~~through the 2020-2021 delivery period and to acquire 100% of the forecasted DG REC shortfall for this time period.~~ This way, according to ELPC, additional commercial and residential installers can take advantage of tax credits which decrease significantly after 2016. ELPC also asks the Commission to consider whether this DG procurement date should be moved earlier than spring 2016 to provide additional time for developers to complete projects to qualify for this tax incentive.
>
> The IPA points out that both the renewable energy procurement targets and the budget available to purchase the renewables are impacted by customers switching between utility service and alternative suppliers. If more customers take supply from ARESs, both the needed resources and the budget for the procurement are affected. The IPA also states that there is no surplus of available funds for the RRB, and it does not project that there will be a significant shortfall of future years' compliance targets. ComEd and Ameren also oppose ELPC's proposal, due to the volatility in customer switching. Ameren further points out that the recent DG procurement only resulted in one

contract, and the administrative costs and efforts to run an expanded procurement do not seem to be justified.

The Commission agrees with ELPC that it is important to consider the availability of federal tax credits to reduce the cost of procuring DG resources. All else equal, a procurement plan that maximizes the proportion of DG RECs procured in 2016 (as opposed to waiting until future years) will result in a lower overall total cost. The Commission appreciates that the IPA must take into consideration the risk of budget volatility due to customer switching. However, the record does not clearly indicate that the IPA has balanced the risk of customer switching against the risk of lost tax credits that could be used to lower costs. ~~the IPA strategy that the decisions made closer to the delivery year are more likely to meet the targets and budgets for the DG REC procurement. The Commission also agrees with ComEd and Ameren that this strategy minimizes any possible switching risk. The Commission agrees with the IPA's date of early Spring to conduct the DG REC procurement, which should allow any interested parties sufficient time to take advantage of the 2016 tax credit.~~ Therefore, the proposal by ELPC and supported by the Renewables Suppliers to expand the DG procurement through the 2020-2021 delivery year is ~~rejected~~ approved by the Commission. The IPA shall consider whether the proposals offered by ELPC and the Renewable Suppliers strikes the correct balance between the risk of budget volatility related to customer switching and the risk that could result from an overly conservative procurement strategy.

III. Section 7.1.5.3 Whether to Exclude Two of Ameren's EE Programs from the Plan When Ameren Asserts that the Cost of these Programs Exceeds the Cost of Electric Supply

ELPC respectfully takes exception to the Proposed Order's exclusion of two cost-effective energy efficiency programs from Ameren's third party IPA efficiency procurement. Ameren claims the cost of these two programs exceeds the prevailing cost of supply, and therefore they should be excluded. (Ameren Objections at 13). As explained below, Ameren's arguments should be rejected and these two cost-effective efficiency programs should be approved, as the Total Resource Cost test weighs costs against benefits and finds that these two programs have benefits that exceed costs.

Ameren's cost of supply metric is somewhat arbitrary in that it ignores many of the system and ratepayer benefits of energy efficiency, as well as other costs of procuring electricity supply. The Proposed Order, and Ameren's position, rest on the assumption that because the energy efficiency programs cost more than supply, they are wasteful. *See* Proposed Order at 96. However, efficiency is a more holistic concept than comparing one cost to another – it also must take into account total benefits, and weigh those benefits against total costs. When total benefits are greater than total costs, an efficiency program is said to be cost effective, or have positive net benefits. Indeed, this is how cost effectiveness is defined in Illinois law. Rather than basing a decision on a new definition from Merriam-Webster, the Commission should look to how cost-effective energy efficiency is already defined in Illinois law.

The 'Provisions relating to energy efficiency procurement' state: "For purposes of this Section, the term 'energy efficiency' shall have the meaning set forth in Section 1-10 of the Illinois Power Agency Act, and the term 'cost-effective' shall have the meaning set forth in subsection (a) of Section 8-103 of this Act." 220 ILCS 5/16-111.5B(b) (2011).

Section 8-103, 'Energy efficiency and demand-response measures' states that "'cost-effective' means that the measures satisfy the total resource cost test" and "'total resource cost test' shall have the meanings set forth in the Illinois Power Agency Act" 220 ILCS 5/8-103 (2011).

And the Illinois Power Agency Act states:

> "'Total resource cost test' or 'TRC test' means a standard that is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than

> one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures. A total resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases."

(20 ILCS 3855/1-10(d) (2011)). By screening just the cost of supply against the cost of the energy efficiency programs, Ameren ignores other costs of procuring supply, such as capacity costs, transmission and distribution costs, line losses, and environmental costs, which are avoided through energy efficiency programs. The Commission states that "no party has pointed to some other benefit of these programs"[3], but the IPA and ELPC both highlighted these other benefits in this proceeding, and in fact, the TRC test as defined in the Illinois Power Agency Act considers these other benefits. (2016 IPA Procurement Plan at 92, ELPC Reply at 6). When these full costs are compared to the full benefits, as they are in the TRC test as directed by Illinois law, these two proposed energy efficiency programs are shown to be cost effective[4], meaning the benefits to implement these energy efficiency programs outweigh the costs. The Proposed Order directs the IPA to procure electricity that is in fact more costly than the two cost-effective energy efficiency programs, when all costs, not just supply costs, are considered. The Commission should amend its order, reject Ameren's cost of supply screen, and accept the two cost-effective energy efficiency programs at issue.

[3] Proposed Order at 96.
[4] *See* 2016 IPA Procurement Plan, Table 7-4 at 94.

Suggested Replacement Language

ELPC respectfully requests the Commission to revise Section IV(B)(7)(d), beginning on page 96 of the Proposed Order as follows:

> At issue is the propriety and the legality of including two EE programs in the Plan <u>for which the cost of the programs exceeds the cost of supply. The Commission finds that a cost of supply test does not fully consider the costs and benefits of an energy efficiency program. Instead, the determining metric of whether a program is cost effective and should be included in the IPA procurement should be the TRC test, being greater than 1, as defined by the Illinois Power Act. Given that the TRC tests for these two programs are greater than 1, their benefits exceed their costs, and the IPA shall include these two programs in its Plan.</u>

Dated: November 20, 2015

Respectfully submitted,

Brad Klein
Senior Attorney
ENVIRONMENTAL LAW & POLICY CENTER
35 E. Wacker Drive, Suite 1600
Chicago, IL 60601
P: (312) 795-3746
F: (312) 795-3730
bklein@elpc.org