

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Power Agency)	
)	
)	Docket No. 15-0541
Petition for Approval of Procurement Plan)	

AMEREN ILLINOIS COMPANY’S BRIEF ON EXCEPTIONS

Ameren Illinois Company d/b/a Ameren Illinois (“Ameren Illinois” or “AIC”) submits, pursuant to 83 Ill. Admin. Code Part 200.830 and the briefing schedule established by the Administrative Law Judges (“ALJs”), its Brief on Exceptions (“BOE”) to the ALJs’ Proposed Order (“ALJPO”) issued in this proceeding on November 13, 2015. Ameren Illinois appreciates the thoughtful treatment of the issues set forth in the ALJPO and submits the following exceptions to the ALJPO. The exceptions, along with proposed modifications to the language of the ALJPO, are organized consistent with the headings and structure of the ALJPO’s discussion of the 2016 Illinois Power Agency (“IPA”) Procurement Plan (“Plan”).

I. EXCEPTIONS

A. Exception #1: Section 7.1.2.1—Whether the Plan Should Be Modified to Ensure that Utilities Offer Multi-Year Contracts in 2017

Recognizing that “an issue upon which consensus was not reached was the length of time for Section 5/16-111.5B program contracts that use hourly load profiles,” the IPA nonetheless requested that the Commission order the utilities to “offer the option of contracts of at least three years in length as part of their Section 16-111.5 RFPs for the 2017 Plan[.]” (ALJPO at 78.) The IPA further recognized that “the 2017 Plan RFP would be an appropriate time for multi-year contracts to once again be offered, given how multi-year contracts at that point in time would coincide with the Section 5/8-103 planning cycle.” (*Id.*) In its briefing, Ameren Illinois agreed with Commonwealth Edison (“ComEd”) that Section 5/16-111.5B does not permit consideration

of incremental energy efficiency bids without reference to whether they will be cost-effective or be an expansion on a “baseline” set of programs approved under Section 5/8-103. (AIC Reply at 7; AIC Objections at 8-9.) Accordingly, Ameren Illinois asked that the IPA’s proposal to conditionally approve programs be rejected, but also noted that it would not object to the ComEd proposal of addressing this issue with the Illinois Stakeholder Advisory Group (“SAG”), seeking a lawful solution. (AIC Reply at 7-8.) The ALJPO does not credit AIC’s position, but instead adopts the IPA’s request in its entirety.

The ALJPO’s treatment of this issue should be modified. Even the IPA appears to recognize that the purpose of multi-year contracts should be to align them with the same time period of the Section 5/8-103 plan cycle, not to go beyond it. (ALJPO at 78.) Ameren Illinois has offered multi-year contracts before, but they have been aligned with the remaining years in the Section 5/8-103 plan cycle. (AIC Reply at 7-8 (noting that the second of the two-year programs procured through the 2015 IPA Procurement Plan would be implemented along with the 2016 IPA Procurement Plan).) Importantly, the 2017 IPA Procurement Plan will procure energy efficiency for the *first* year of AIC’s next Section 5/8-103 three-year plan cycle. Setting aside the legal issues raised above, the utilities should not be required to elicit bids for programs that exceed the three years that comprise the next plan cycle as it could have the result of procuring Section 5/16-111.5B programs that are *longer* than Section 5/8-103’s three-year programs. This would be bad policy, as it would constrain a utility’s ability to deliver programs through Section 5/8-103 to a larger customer base, and would negatively impact a utility’s ability to achieve the mandated Section 5/8-103 energy savings goals. Moreover, offering multi-year programs under Section 5/16-111.5B that do not align with Section 5/8-103 programs also does not comport with the Public Utilities Act (“Act”), which requires identification of “new or

expanded cost-effective energy efficiency programs or measures that are *incremental* to those included in energy efficiency and demand-response plans approved by the Commission *pursuant to Section 5/8-103.*” 220 ILCS 5/16-111.5B(3)(C) (emphasis added); *see also* Section 5/16-111.5B(5) (noting the Commission should approve those programs that “otherwise satisfy the requirements of Section 5/8-103 of this Act,” which calls for a three-year plan). The ALJPO’s conclusion does not comport with the Act and should not stand.

Accordingly, while Ameren Illinois reserves its legal arguments with respect to the approval of multi-year programs in the 2017 IPA Procurement Plan, Ameren Illinois respectfully requests that page 82 of the ALJPO be revised to limit the bids to up to three years, rather than “no less than three years” as set forth below. Alternatively, to the extent the Commission does not agree, this issue would benefit from further discussion with interested stakeholders, including those not a party to this docket, and so Ameren Illinois respectfully requests that page 79 of the ALJPO be revised to order this issue be addressed at the SAG.

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c. Commission Analysis and Conclusion

The IPA’s request is reasonable, and it is adopted, subject to the following modifications. ~~Longer contracts can promote broader participation and better results. While t~~The Commission agrees with the IPA that contracts of at least three years in length may “fully capture the potential for all achievable cost savings;” such contracts should not exceed the length of the corresponding Section 5/8-103 plan cycle. ~~While Ameren does propose edits to the Plan, it is not clear that Ameren disagrees with the IPA’s request and rationale. Accordingly, the Commission finds that T~~the utilities should include the offer the option of bidding programs of up to contracts of at least three years in duration as part of their Section 5/16-111.5B RFPs for ~~their~~ the IPA’s 2017 Plans. ~~The Commission rejects Ameren’s proposed language, as it seems to add little and it could override the possibility of longer contracts.~~

Alternative proposal for page 79:

c. Commission Analysis and Conclusion

~~The IPA's request is reasonable, and it is adopted. Longer contracts can promote broader participation and better results. The Commission agrees with the IPA that contracts of at least three years in length may "fully capture the potential for all achievable cost savings." While Ameren does propose edits to the Plan, it is not clear that Ameren disagrees with the IPA's request and rationale. However, the Commission recognizes that this is a complicated issue that would benefit from workshops conducted by the SAG. Accordingly, the SAG shall convene workshops to address whether the utilities should include the offer the option of bidding programs of up to contracts of at least three years in duration as part of their Section 5/16-111.5B RFPs for the IPA's 2017 Plans. The Commission rejects Ameren's proposed language, as it seems to add little and it could override the possibility of longer contracts.~~

B. Exception #2: Section 7.1.3—Whether the Plan Should Include 2013 Consensus Items in this Section

Ameren Illinois initially objected to the inclusion in the Plan of certain “consensus items” developed in connection with the 2013 IPA Procurement Plan approval because of a concern that they were stale and they conflicted with later consensus items developed after the 2014 IPA Procurement Plan approval. (AIC Objection at 3.) As explained in AIC’s Reply, discovery conducted in this matter resolved AIC’s concern regarding whether the 2013 and 2014 consensus items conflicted with each other, and so AIC withdrew that objection. (AIC Reply at 4-5.) However, AIC still maintains its concern that “consensus items” developed years before the time period in which they are applied will have become stale. This objection was premised not on whether the 2013 “consensus items” were valid at the time they were developed, but rather on whether, given the time that has passed and the evolution of energy efficiency policy and the parties’ respective positions, the 2013 “consensus items” should be approved as acceptable by the Commission. (AIC Objections at 3; AIC Reply at 3-6.)¹

¹ This issue is particularly salient in light of the pending petition, filed by the Office of the Attorney General (“AG”) (and supported by a variety of stakeholders, including Ameren Illinois), seeking approval of the first-ever Energy Efficiency Policy Manual, certain provisions of which apply to Section 5/16-111.5B programs beginning June 1, 2017. See ICC Docket No. 15-0487.

Further, after consideration of the briefing by the parties, Ameren Illinois proposed a compromise on this issue in its Reply, stating it would also withdraw its staleness objections if the Commission would make clear that “approval of an alleged ‘consensus’ position in this docket should *not* be used to block or impede the evolution of energy efficiency policy with respect to Section 5/16-111.5B programs, whether approved as part of the Energy Efficiency Policy Manual or otherwise.” (AIC Reply at 6-7 (emphasis original).) Unfortunately, the ALJPO’s treatment of this issue simply approves the consensus items without providing any such clarity.

Energy efficiency policy in Illinois is evolving at a rapid pace, aided significantly by the work of the SAG, at the direction of the Commission, which includes the utilities and other stakeholders. While Ameren Illinois understands that the ALJPO approves the 2013 “consensus items” as acceptable, it should also be made clear that, in accepting the consensus items recommended for “approval,” the Commission does not bless using the Final Order in this proceeding as a roadblock to future progress. Accordingly, AIC respectfully requests that pages 80 and 81 of the ALJPO be modified as follows:

Page 80:

b. Ameren Position

Ameren argues that the 2013 consensus items should be stricken from the Plan **because they are stale and do not account for the current evolution of energy efficiency policy in the State. Ameren Objections at 3. While Ameren initially objected that the 2013 consensus items were** ~~states that they are~~ contradictory to some of the 2014 consensus items, **after receiving discovery from the IPA and Staff Ameren withdrew its objection on this basis. (Ameren Reply at 5.)** ~~Ameren also contends that these matters are “stale.” Ameren Objections at 3.~~

~~According to Ameren, the IPA has selectively identified only a few of the consensus positions reached in 2013. Also, Ameren maintains that the IPA gives “no regard” to the current landscape of EE policy development. Ameren Reply at~~

4. It further states that there is “no disagreement that the IPA’s list of consensus positions reflects positions on EE policy that were developed two years ago”, **but these positions “should not be used to block or impede the future evolution of energy efficiency policy with respect to Section 5/16-111.5B programs, whether approved as part of the Energy Efficiency Policy Manual or otherwise.” (AIC Reply at 5-7 (emphasis removed)).**

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d. 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. **In consideration of the various positions, the Commission approves the 2013 consensus items as acceptable positions to be taken by parties, though the Commission notes that approval of these positions should not be used to block or impede the future evolution of energy efficiency policy with respect to Section 5/16-111.5B programs.** therefore declines to require the IPA to amend its Plan in the manner that Ameren requests.~~

C. **Exception #3: Section 7.1.5.2—Whether Ameren Illinois’ Adder to its TRC Analysis for Administrative Costs in EE Programs Adequately States what its Actual Administrative Costs Are**

In the Plan, the IPA reduced the Ameren Illinois administrative cost adder, one of the inputs on the “cost” side of the cost-benefit balancing equation that is the Total Resource Cost (“TRC”) test. In doing so, the IPA cited Ameren Illinois’ breakdown of its estimated administrative costs:

In its submittal, Ameren Illinois explained the costs as “3.5% for Evaluation, Measurement & Verification activities (“EM&V”), 5% for program implementation oversight; portion of the costs to conduct the potential study (estimated at \$1.5 million), ~3% for education and awareness activities as well as planning, assessment and tracking of the programs, as required under Section 5/16-111.5B.”

(IPA Plan at 95-96.) The IPA then added up the listed numerical percentages, which totaled 11.5% and, from that, the IPA concluded the remainder of the 13.58% used by Ameren Illinois as the estimated total administrative cost figure was comprised solely of the costs related to the potential study. The IPA then recommended reducing the estimated administrative cost adder to 11.5%. However, the IPA’s position appears to be founded on a misread of AIC’s submittal.

As Ameren Illinois explained in its Reply, “[w]hen AIC’s Submittal says ‘~3% for education and awareness activities as well as planning, assessment and tracking of the programs,’ it was intended to be read as ‘~3% for education and awareness activities as well as [the remainder for] planning, assessment and tracking of the programs[.]’” (AIC Reply at 8-9). Accordingly, the difference between the 11.5% counted up by the IPA and the 13.58% submitted by Ameren Illinois as its total figure for the administrative adder consists of an amount for “planning, assessment and tracking of the programs” *as well as* a “portion of the costs to conduct the potential study.” AIC recognizes that this issue has been inadvertently made more complicated by AIC’s submittal to the IPA, but what is clear is that estimated administrative costs associated with “planning, assessment and tracking” of programs administered under Section 5/16-111.5B should be included in a test designed to compare the costs and benefits of those programs (like the TRC test). This is true whether or not bidders included these costs in their bids as “program cost.” (AIC Reply at 8-9.) To do otherwise would result in a TRC test

result that did not account for known costs to ratepayers² and would thus overstate the benefits. And this could lead to having customers pay for cost-ineffective programs that may not even provide the anticipated level of benefits. While it is not presently clear whether the ALJPO intended this result excluding costs from the current estimate of AIC's administrative costs in this docket, the findings set forth in the ALJPO on this issue would have that effect.

Moreover, with respect to the allocation of the portion of the costs associated with AIC's potential study, the ALJPO states that the "potential study is not a cost which was incurred in administering any particular program, and the potential study was the *only* change that the IPA made to Ameren's adder for administrative costs." (ALJPO at 91 (emphasis added).) As explained above and set forth in AIC's briefing, the cost of the potential study was not the only cost the IPA cut from the Ameren Illinois administrative adder. (AIC Reply at 8-9.) The IPA, inadvertently or otherwise, also reduced the portion of the administrative cost adder dedicated to the planning, assessment and tracking of the programs. However, neither the briefs submitted by the IPA and Staff nor the ALJPO's treatment of this issue provides any justification based in evidence to do so.

Furthermore, under the law, the cost of the potential study *should* be included in the TRC test calculation for a particular program. Section 5/16-111.5B(a)(6) provides that "all costs associated with complying with this Section and all start-up and administrative costs" should be recovered from customers. 220 ILCS 5/16-111.5B. Accordingly, the cost of procuring a potential study, which is specifically required under Section 5/16-111.5B(a)(3)(A), *is*

² As agreed to by the IPA, Staff and Ameren Illinois, prudent and reasonable costs incurred in connection with "planning, assessment and tracking" of programs are recovered from ratepayers through Rider EDR.

recoverable and *will* be incurred by customers. The costs should therefore be considered for TRC test purposes.³

Finally, by adopting Staff's and the IPA's proposed exclusion of the allocated cost of the potential study on the grounds that including it would "skew[] the test results," the ALJPO's conclusion ironically does exactly that. (ALJPO at 91.) By *excluding* a known and undisputed cost to the customer when considering cost-effectiveness, the ALJPO ensures that the TRC test results will be skewed *in favor* of understating costs, thereby overstating the cost-effectiveness of proposed programs. Accordingly, AIC respectfully requests that page 91 of the ALJPO be modified as followed:

e. Commission Analysis and Conclusion

~~The Commission agrees with Staff and the IPA. Ameren's potential study is not a cost which was incurred in administering any particular program, and the potential study was the only change that the IPA made to Ameren's adder for administrative costs. As Staff has pointed out, including costs in a TRC Test analysis of a particular program that do not involve that specific program skews the test results. Additionally, while Ameren has argued that the IPA is cutting its administrative budget, the IPA and Staff have demonstrated that this is not correct. The Commission agrees with Ameren and Staff, however, in that, the percentage of Ameren's administrative costs may very well differ from that incurred by ComEd. **Moreover, the Commission emphasizes that Section 5/16-111.5B provides a framework for the procurement of incremental energy efficiency, and that framework requires the utilities to procure and submit a potential study. See 220 ILCS 5/16-111.5B(a)(3)(A). Excluding the allocated costs of the potential study from Ameren's estimated administrative costs would skew the TRC test results by understating the costs of procured programs and measures relative to their benefits, thereby creating the possibility of procuring cost-ineffective programs. The Commission therefore declines to reduce Ameren Illinois' administrative adder of 13.58%, and the Plan is modified accordingly.**~~

³ On this point, the Staff/IPA argument has been that, because this particular cost is attributable to all programs or measures procured pursuant to Section 5/16-111.5B, it must therefore be attributable to none. (IPA Response to Objections at 11-12; Staff Response to Objections at 13). However, the correct approach to allocating a cost attributable to all programs, instead of to a particular program, is to pro-rate the cost across all programs, not to ignore the cost all together.

However, it seems that even after the Commission ordered the utilities to track their administrative costs in Docket No. 14-0588, the utilities are not clear as to what administrative costs should be tracked. This topic should be thoroughly addressed and determined with specificity in workshops conducted by the SAG.

D. Exception #4: Section 7.1.5.4—Whether to Exclude Programs that Duplicate Existing DCEO Programs.

Ameren Illinois opposed the “conditional” approval of the two programs that all parties agree are duplicative of existing programs run by the Department of Commerce and Economic Opportunity (“DCEO”). The IPA, on the other hand, urged the Commission to grant such conditional approval because of a possibility that, for period of June 1, 2016—May 31, 2017, the current budget crisis may not yet be resolved and DCEO may not have a budget to administer programs.

As a legal matter, and as noted earlier in this brief, under the law the Commission should only approve “incremental” energy efficiency and programs that all parties agree would duplicate the savings of existing programs cannot be considered “incremental.” *See* 220 ILCS 5/16-111.5B(3)(C) (noting the inclusion in the Plan of “new or expanded cost-effective energy efficiency programs or measures that are incremental to those included in energy efficiency and demand-response plans approved by the Commission pursuant to Section 5/8-103 of th[e] Act”). Thus, the Commission should reject the IPA’s requested “conditional” approval based on speculation of what may or may not happen in the future on that basis alone.

Additionally, as the record makes clear, the TRC analysis performed on these programs was done as a good faith accommodation and at the request of the IPA and DCEO, which should not be taken as an indication that the TRC test results can be relied upon to approve these programs should DCEO decide to run its duplicate programs. (Ameren Objections at 4, fn.3; 18-19.) Put simply, the Commission has authority to direct the utilities to undertake negotiations with the bidders of the duplicative programs, but nothing prevents DCEO from deciding to run

its already approved programs sometime after the conclusion of the period of time in which a party can seek rehearing of the Final Order. In such a circumstance, the TRC analysis relied upon by the IPA would be inaccurate and unreliable as it did not account for the duplication of savings.

The ALJPO, however, rejects Ameren Illinois' position, expressing no concern, because "Ameren has given this Commission no indication that its TRC analysis is anything more than slightly unreliable." (ALJPO at 98.) Instead, the ALJPO conditionally approves the programs by stating "if the status of the DCEO programs is not known by the window time for requesting rehearing herein has expired, the conditional programs will be approved." (*Id.*)

AIC respectfully requests that this conclusion not stand and that page 98 of the ALJPO be modified to adopt AIC's position on this issue. However, should the Commission not make the modifications requested below, in an effort to avoid duplicating savings, Ameren Illinois would plan to negotiate and enter into conditional contracts with the program implementers subject to cancellation if DCEO gets funding to run its programs pursuant to Section 5/8-103. In contemplation of that plan, Ameren Illinois provides alternative clarifying language below as well.

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c. Commission Analysis and Conclusion

The Commission agrees that duplicative programs are not "new or expanded cost-effective energy efficiency programs or measures that are incremental to those included in energy efficiency and demand-response plans approved by the Commission pursuant to Section 5/8-103" and therefore should not be approved. 220 ILCS 5/16-111.5B(3)(C). While the Commission recognizes that the IPA seeks to find solutions to potential problems, it has not been established in this proceeding that the current budget issues facing the State will, in fact, prevent DCEO from administering energy efficiency programs from June 1, 2016 – May 31, 2017. Accordingly, the IPA should modify its Plan to exclude the two duplicative DCEO programs.

~~The IPA's modification of its original proposal is reasonable, and it shall be adopted. That is, if the status of the DCEO programs is not known by the window time for requesting rehearing herein has expired, the conditional programs will be approved.~~

~~Ameren acknowledges that it performed TRC analyses of these programs but states that this analysis is not accurate because it is not yet known whether the programs will ultimately be duplicating savings. See, Ameren Objections at 19, fn. 8. Yet, the fact that it performed a TRC analysis of these programs is indicia that they meet the statutory standards. Ameren provides this Commission with no information indicating that its TRC analyses is extremely unreliable. The Commission acknowledges that Ameren's TRC analysis may not have been totally accurate; however, Ameren has given this Commission no indication that its TRC analysis is anything more than slightly unreliable.~~

~~This conclusion is not meant to suggest that a full TRC analysis is not necessary for EE programs. Rather, it is an acknowledgment that the status of DCEO's programs, currently, is precarious and the IPA has found a way, albeit a less than perfect one, to deal with that situation.~~

Alternative page 98:

c. Commission Analysis and Conclusion

The IPA's modification of its original proposal, subject to the changes set forth herein, is reasonable, and it shall be adopted. That is, if the status of the DCEO programs is not known by May 1, 2016 the window time for requesting rehearing ~~herein has expired~~, the conditional programs will be approved.

~~Ameren acknowledges that it performed TRC analyses of these programs but states that this analysis is not accurate because it is not yet known whether the programs will ultimately be duplicating savings. See, Ameren Objections at 19, fn. 8. Yet, the fact that it performed a TRC analysis of these programs is indicia that they meet the statutory standards. Ameren provides this Commission with no information indicating that its TRC analyses is extremely unreliable. The Commission acknowledges that Ameren's TRC analysis may not have been totally accurate; however, Ameren has given this Commission no indication that its TRC analysis is anything more than slightly unreliable.~~

~~This conclusion is not meant to suggest that a full TRC analysis is not necessary for EE programs. Rather, it is an acknowledgment that the status of DCEO's programs, currently, is precarious and the IPA has found a way, albeit a less than perfect one, to deal with that situation.~~

E. Exception #5: Section 8.1—Whether the RRB Should be used for SREC [When] the Total REC Target has been Exceeded for the Present Year with Existing Contracts

With respect to whether the renewable resources budget (“RRB”) should be used to procure Solar RECs (“SRECs”) when the total REC target has been exceeded for the present year, the ALJPO states that “the Commission finds that the plain language of the Section 1-75(c)(1) requires technology-specific targets by dates certain, and the IPA’s proposal to conduct a Spring SREC procurement which mimics the structure and process of the 2015 supplemental procurement and is described in the Plan at pages 127-130 is hereby adopted.” (ALJPO at 114.) Ameren Illinois respectfully requests that the ALJPO be modified so that the IPA's proposal is not adopted.

As Ameren Illinois described throughout the proceeding, a procurement of one-year SRECs would add approximately \$2.2 million in costs to eligible retail customers at a time when supply costs have increased substantially due to an increase in the price of capacity. (AIC Objections at 20-21.) Ameren Illinois also pointed out that the 2015 supplemental procurement resulted in approximately 80% of the SRECs from states other than Illinois or adjacent and that the value of such a procurement is unclear. (*Id.*)

The ALJPO echoes the IPA argument that a plain reading of the statute requires a procurement of SRECs, but the ALJPO does not address that the Commission has previously ordered no SREC procurement in 2013/2014, when it found that “on a total portfolio basis, there is no compelling reason to purchase additional renewable resources during the planning horizon, even though there may be dollars left over to spend.” ICC Docket No. 12-0544, Final Order (Dec. 19, 2013) at 51.

The ALJPO also does not address that the subtarget requirement for Distributed Generation REC (“DG RECs”) has not been satisfied by prior IPA procurements. Further, the

IPA designed its procurement in a manner that DG RECs should be solicited from Illinois only, whereas SRECs could be solicited from a much larger pool of states outside of Illinois. Under the IPA's logic, thus, renewable subtargets are plain language requirements under law, but only to the extent they align with the design strategies associated with IPA procurements. This logic is contradictory and does not support the IPA's position. Moreover, the IPA's illogical proposal would create considerable confusion among parties interested in participating in the IPA renewables procurements, which collectively encompass the RRB, RERF and ACP funds.

Ameren Illinois believes that the Commission's previous ruling regarding the 2013/2014 procurement is instructive and should be again adopted in this proceeding—a one year SREC procurement is not required in a year where the total REC target has been exceeded. Such a finding is especially appropriate under a procurement design that relies heavily on SREC procurements from states other than Illinois or adjacent and where the procurement would add approximately \$2.2 million to eligible retail customers without a clear benefit.

For these reasons, Ameren Illinois respectfully requests that page 114 of the ALJPO be modified as follows:

~~As the IPA correctly points out, the language in Section 1-75(c)(1) of the IPA Act is not permissive: "...at least the following percentages of the renewable energy resources used to meet these standards shall come from photovoltaics on the following schedule: 0.5% by June 1, 2012, 1.5% by June 1, 2013; 3% by June 1, 2014; and 6% by June 1, 2015 and thereafter..." 20 ILCS 3855/1-75(c)(1). The IPA has an obligation to meet technology specific targets as described in this Section. The language does not carve out an exception if the overall target of RECs is met. Where possible, clear and unambiguous terms in statutes 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). 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). Ameren argues that the SREC procurement will lead to unnecessary costs and no clear gains, as Illinois or Illinois adjacent suppliers have not participated in previous solar procurements. Ameren questions whether a~~

procurement of one year SRECs serves any valid purpose or is required in a year where total REC targets are exceeded. Regardless, the Commission finds that the plain language of the Section 1-75(c)(1) requires technology specific targets by dates certain, and the IPA's proposal to conduct a Spring SREC procurement which mimics the structure and process of the 2015 supplemental procurement and is described in the Plan at pages 127-130 is hereby adopted.

In ICC Docket No. 12-0544, the Commission determined that the IPA should not pursue a one year SREC procurement in 2013/2014, even though the RRB had funds remaining because the total REC target had been exceeded with existing contracts. Final Order (Dec. 19, 2013) at 51. This was done because the total REC target had been exceeded with existing contracts. For the procurement cycle at issue, Ameren Illinois has presented evidence that eligible retail customers would incur approximately \$2.2 million of additional costs and these costs would come at a time when customers have incurred a significant increase in supply costs driven in large part by higher capacity prices. In addition, it appears logical to assume the proposed one year SREC procurement would have a similar result to that seen in 2015; that is the majority of SRECs would be procured from states other than Illinois or adjacent. It is not clear to the Commission what benefit eligible retail customers receive under this scenario.

While the IPA has argued that a plain reading of the law requires REC subtargets be met, the Commission notes that the DG REC subtargets have not been met in prior procurement plans and this is in large part due to the manner in which the IPA has designed its prior solicitations; that is the IPA has required in state DG RECs while allowing out of state SRECs. The Commission is concerned about increasing costs of supply for eligible retail customers. While the IPA argues that a plain reading of the law requires procurement of REC subtargets regardless of whether the total REC target has been exceeded, IPA procurement designs are not consistent with this plain reading; that is to say that the differences between how SREC and DG REC subtargets are procured contradicts the logic put forth by the IPA.

In consideration of the positions set forth by the parties on this issue, the Commission orders that the IPA proposal to procure one year SRECs for 2016/2017 be rejected, consistent with the proposal put forth by Ameren Illinois and as supported by ComEd. The IPA shall modify its Plan to comply with this finding.

F. Exception #6: Section 8.4—Whether the IPA should be the Contractual Counterparty with Suppliers to the Planned DG Procurement and not the Utilities Themselves; Whether the bids or the Resulting Contracts should be Required to be at Least 1 Megawatt in Size for the DG Procurement

The IPA argued for a procurement of DG RECs using renewable funds previously collected from AIC and ComEd real time pricing customers through Alternative Compliance Payments (“ACP”).⁴ (ALJPO at 127.) AIC and ComEd recommended that the IPA become the contracting party for such procurements rather than the utilities and, further, that the procurements be of at least 1 megawatt in size. (ALJPO at 128.) The ALJPO rejected Ameren Illinois’ and ComEd’s request in its entirety. (ALJPO at 128.)

As explained by Ameren Illinois in its briefing, there are administrative costs associated with having a different DG REC procurement process using RERF funds and those using ACPs, including those associated with multiple RFPs, separate contracts and timelines. (AIC Reply at 27-29.) These costs would ultimately be borne by customers, and these costs could be streamlined (and possibly avoided) if both DG REC procurements were run through the IPA. Further, having multiple DG REC procurements creates confusion for market participants, which does not promote participation, but rather limits it. Conversely, no party has identified any harm to any party—not to the customer, the utility or the IPA—by having a streamlined approach to procuring DG RECs through the IPA, as opposed to the utility. And the benefits that have been established by Ameren Illinois are significant; one clear line of sight for multi-year DG REC contracts and reduced administrative costs. (AIC Reply at 27.)

⁴ Ameren Illinois notes that no party disputes that Section 1-75 describes that IPA procurements for eligible retail customers should result in contracts between the suppliers and the utilities. Furthermore, no party disputes that Section 1-56 describes that IPA procurement using the Renewable Energy Resources Fund (“RERF”) should result in contracts between the suppliers and the IPA. The difference in opinion comes in regards to the ACPs collected by the utilities from their real time pricing customers.

While the IPA and ELPC have raised concerns that AIC's and ComEd's approach may be inconsistent with the Act, any such concern could be explored and addressed during the development and implementation portion of the process. For example, as explained by Ameren Illinois in its briefing, the RFP for the combined DG REC procurement could specify that the procurement is intended to solicit DG RECs using both RERF and utility collected ACP funds. The IPA could then have a pre-determined methodology to retire RECs in a manner that tracks the portion applicable to RERF and ACP funds. To ensure transparency and an audit trail, this information could be made public in each IPA procurement plan and/or in the IPA's annual renewables report to the Illinois General Assembly.

Ameren Illinois respectfully requests that the ALJPO be modified to adopt its alternative proposal. To the extent the Commission remains concerned that significant implementation details remain, the Commission can approve the proposal, subject to the IPA and the applicable utility reaching consensus in early 2016 regarding the implementation details. The IPA and applicable utility would then provide the Commission with an informational filing which provides a summary of the process to be implemented and documentation that the IPA and applicable utility have reached consensus. Accordingly, the following changes to pages 127-128 of the ALJPO are respectfully requested:

The IPA recommends a procurement of DG RECs using renewable funds previously collected from Ameren and ComEd real-time pricing customers. Ameren suggests that the IPA become the contractual counterparty with suppliers to the planned DG procurement and not the utilities themselves. This proposal is supported by ComEd. The IPA is allowed to enter into contracts under Section 1-56(i) of the IPA Act because the source of those funds, namely the RERF is under the control of the IPA. **After consideration of the arguments raised by the IPA, ELPC, ComEd and Ameren, the Commission finds ComEd's and Ameren's proposal to be the preferred one and hereby adopts it. The costs associated with multiple procurements should be avoided through a streamlined procurement process. While the IPA and ELPC raise concerns that the Act does not allow for the IPA to be the counterparty to DG REC procurement**

contracts, the Commission does not agree that the plain language precludes the IPA from doing so. Additionally, any implementation details that could give rise to such a concern should be considered and discussed by the utilities and the IPA during the development of the DG REC procurements under the Plan.

The Commission therefore orders the 2016 DG REC procurement using funds already collected by the utility from real time pricing customers should be combined with the IPA procurement using RERF. The IPA will act as the sole contractual counterparty with suppliers. The utilities will work with the IPA to develop a supplemental agreement whereby the utilities will reimburse the IPA for the future portion of contract costs applicable to real time pricing customers. The utilities and the IPA will submit a compliance filing prior to the 2016 DG REC procurement which shall include a copy of the agreed upon supplemental agreement and confirmation that Ameren Illinois, ComEd and the IPA have reached consensus regarding the language and have executed the supplemental agreement. The IPA shall modify its Plan to comply with these findings. The DG procurement takes place using funds collected from real-time pricing customers of the utilities. The Commission agrees with the IPA that Section 1-75(c)(5) of the IPA Act specifically states that these funds are to be used for the "purchase of renewable energy sources to be procured by the electric utility." 20 ILCS 3855/1-75(c)(5). As the IPA points out, there is nothing in the IPA Act or the PUA that would authorize the IPA to enter into these contracts. The proposal of Ameren and supported by ComEd is rejected.

II. CONCLUSION

For the reasons set forth above, Ameren Illinois Company respectfully requests that the Commission modify the ALJPO as set forth herein.

Dated: November 20, 2015

Respectfully submitted,

The Ameren Illinois Company

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CERTIFICATE OF SERVICE

I, Mark W. DeMonte, an attorney, certify that a copy of the foregoing Brief on Exceptions was filed on the Illinois Commerce Commission's e-docket and was served electronically to all parties of record in this docket on this 20th day of November, 2015.

/s/ Mark W. DeMonte

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Attorney for Ameren Illinois Company