

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

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

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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 Reply Brief on Exceptions (“RBOE”) 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 RBOE, respectively.

On November 20, 2015, in addition to Staff, the following parties filed a BOE:

The Peoples of the State of Illinois (“AG”), by Lisa Madigan, Attorney General of the State of Illinois,¹

Ameren

ComEd

ELPC

IPA

MEC,² and

Renewables Suppliers

Staff’s RBOE is set forth below. The absence of a Staff reply to arguments or positions taken by the parties in their BOE, does not imply that Staff agrees or accepts the arguments or position.

¹ The AG did not file an appearance in this matter until November 20, 2015.

² On November 20, 2015, MEC filed a letter addressed the Chief Clerk. In that correspondence, MEC made substantive statements supporting the ALJs, the ALJPO and addressed the calculation of renewables for MEC based upon comments previously made by MEC. Accordingly, Staff is considering MEC’s November 20, 2015 correspondence to be a BOE.

II. ARGUMENT

A. Whether any LTPPA Curtailment will be required for the 2016-2017 Delivery Year [Plan Action Items 2 and 7] [Section 1.4]

The Renewables Suppliers take exception to the ALJPO concerning Plan Action Items 2 and 7. Plan Action Item 2 states:

Require the utilities to provide an updated load forecast by March 15, 2016 which will be preapproved by the ICC as part of the approval of this Plan, subject to the review of the IPA. The consensus of each utility, the IPA, the ICC Staff, and the Procurement Monitor will be required if a utility load forecast triggers the curtailment of the Long-Term Power Purchase Agreements.

(IPA Plan, 6.) Plan Action Item 7 states:

Approve pro-rata curtailment of ComEd and/or Ameren Illinois' 2010 long-term power purchase agreements for renewable energy in the unlikely event that the updated March 2016 expected load forecast indicates that such a curtailment is necessary. This forecast will form the basis for pro-rata curtailment of long term renewable contracts assuming consensus is reached among the parties identified in Item 2 above. Otherwise, the July 2015 forecast will form the basis for curtailment.

(IPA Plan, 7.) The Renewables Suppliers in their first exception, argue that the ALJPO is in error for not allowing interested parties, such as the Renewables Suppliers, to file comments on revised load forecasts. (Renewables Suppliers BOE, 2.) The Renewables Suppliers position is based upon both a legal argument and equity and due process arguments. (Id.) With respect to its legal argument, the Renewables Suppliers argue that the Plan is inconsistent with Section 16-111.5(d)(4) of the PUA. The Commission should reject the Renewables Suppliers arguments. First, as Staff discussed in its Reply, contrary to the Renewables Suppliers' argument, action items no. 2 and no. 7 do not conflict with the PUA. (Staff Reply, 4-5.) Section 16-111.5(d)(4) of the PUA states:

The Commission shall approve the procurement plan, including expressly the forecast used in the procurement plan, if the Commission determines

that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.

220 ILCS 5/16-111.5(d)(4). It is Staff's position that the word "forecast" in Section 16-111.5(d)(4) refers to the mathematical models and methods used to derive forecasted quantities. Therefore, IPA Plan action items no. 2 and no. 7 are consistent with Section 16-111.5(d)(4) of the PUA. To the extent to which there would be any controversy over a forecast used in a procurement plan, it would be a dispute about the mathematical models and methods used rather than the output of those models and methods. (Id., 4-5.)

Second, Section 16-111.5(b)(4) of the PUA provides that "[t]he procurement plan shall include for load requirements included in the procurement plan, the process for (i) hourly balancing of supply and demand and (ii) the criteria for portfolio re-balancing in the event of significant shifts in load." 220 ILCS 5/16-111.5(b)(4). (emphasis added). Beginning with the IPA's first procurement plan (Docket No. 08-0519), the Commission has approved the use of updated load forecasts to address the potential for significant shifts in load. The Commission also approved the use of updated load forecasts in the IPA's second procurement plan (Docket No. 09-0373). For both plans, the Commission approved the use of updated load forecasts and a process for determining whether rebalancing was necessary which included among other things the IPA convening a meeting between Commission Staff, the utilities, and the procurement administrator to determine whether rebalancing of the portfolio was necessary. The Commission's orders stated that such a process using updated load forecast was "deemed to be reasonable." (IPA Petition for Approval of 2009 Plan, ICC Order Docket No. 08-0519, 59 (January 7, 2009); IPA Petition for Approval of 2010 Plan, ICC Docket No. 09-0373, 166 (December

28, 2009).) Also, as Staff pointed out in its Response (Staff Response, 4-5.), the Commission recently in Docket No. 13-0546 rejected a similar challenge made by the Renewables Suppliers.³ (Id., 4-5.) The Commission noted in that case:

The Commission also observes that the IPA is an independent state agency created specifically to develop the Procurement Plan as well as to implement the approved Plan. While the Staff, Procurement Administrator, and Procurement Monitor participate in and oversee the IPA's activities, the IPA has responsibility for many of the procurement activities. Despite the concerns expressed by the [Renewables Suppliers], the Commission is comfortable the process it has previously used has been and will continue to be effective and successful.

As in previous procurement proceedings, between the IPA, Staff, and ComEd/AIC (as well as the Procurement Administrator and Monitor, should they be retained), the Commission believes that technical issues related to load forecasting will be objectively vetted and appropriately addressed. The Commission rejects the RS' proposals.

(IPA Petition for Approval of 2014 Plan, ICC Order Docket No. 13-0546, 198-199 (December 18, 2013).) (Staff Reply, 5-6.)

With respect to the Renewables Suppliers' equity and due process arguments, as discussed above, the Plan is consistent with the PUA and the Plan incorporates the same process that was approved by the Commission in prior dockets most recently Docket No. 13-0546. This process allows the IPA to take into account updated load forecasts and their impact on renewable curtailments. Historically, this process has worked well and there is no reason to believe it should not continue to work well in the future. Finally, by the time the utilities submit their March updates, the Commission will have already approved the

³ The Renewables Suppliers in Docket No. 13-0546 consisted of the Renewables Suppliers in this pending case plus: Algonquin Power Co. and its subsidiary project company GSG 6.LLC; EDP Renewables North America LLC and its subsidiary project companies Blackstone Wind Farm, LLC, Meadow Lake Wind Farm, LLC, Meadow Lake Wind Farm II, LLC, Meadow Lake Wind Farm III LLC and Meadow Lake Wind Farm IV LLC. (Renewables Suppliers' Petition to Intervene, October 1, 2013.)

load forecasting methodologies. The purpose of the March updates is merely to update the inputs to the forecasts to reflect only any changes that may occur over the period since the forecast was presented in this docket in July. Issues about the forecast on which there can be debate, as well as the vast majority of the result, will have already been submitted, reviewed, litigated, and approved in this formal docket. Thus, by the time the Commission enters its final order, Renewables Suppliers (and any other interested party) will have had ample opportunity to fully vet the forecast methodologies. This process therefore is both equitable and provides due process to the Renewables Suppliers. (Staff Response, 5-6.) Based upon all of the above, the Commission should reject the Renewables Suppliers' Exception No. 1.

B. Whether the Plan Should Include 2013 Consensus Items in this Section [Section 7.1.3]

Staff objects to Ameren's proposed language in its Exception No. 2 that would have the Commission simply "approve[] the 2013 consensus items as acceptable positions to be taken by parties." (Ameren BOE, 6.) Specifically, Ameren's proposed language that merely approves as acceptable the positions taken by parties appears to be a complete reversal of the ALJPO's conclusion as it does not actually approve the consensus items in the Plan, but it approves as acceptable parties' positions. As noted in Staff's BOE, Staff agrees with the ALJPO's decision to keep the 2013 consensus items in the Plan. (Staff BOE, 3-4.) In order to reduce confusion on this issue, Staff recommended in its BOE that 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, both the 2013 and 2014 consensus items. (Id.) In light of Ameren's BOE clarifying

that it does not believe the 2013 consensus items included in the Plan are contradictory, Staff believes it is appropriate to modify the ALJPO language to reflect that fact. In addition, as noted in Staff's Response, Staff agrees with Ameren's point that there are changes and discussions occurring between parties in the Illinois Energy Efficiency Stakeholder Advisory Group ("SAG") with respect to future policies concerning the development, planning, implementation, and evaluation of energy efficiency in Illinois. (Ameren BOE, 5; Ameren Objections, 3; Staff Response, 7.) Accordingly, while Staff does not agree with Ameren's concern that adoption of the consensus language in this proceeding would somehow impede evolution of energy efficiency policy in Illinois, Staff has no objection to including clarification in the section to address Ameren's concern and that would explicitly clarify that adoption of the consensus items are not intended to prevent evolving energy efficiency policy discussions from occurring through the SAG.

For the reasons set forth above, Staff respectfully requests that page 81 of the ALJPO be modified consistent with Staff's Revised Recommended Substitute Language set forth below.

1. Revised 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. Both Ameren and Staff point out that the SAG is actively discussing the future development, implementation and evaluation of energy efficiency programs in Illinois. (Ameren Objections at 3; Staff Response at 7) The Commission wishes to clarify that adoption of the 2013 and 2014 consensus items in the Plan is not intended to prevent evolving energy efficiency policy discussions from occurring through the SAG. The Commission encourages the SAG to review the 2013 and 2014 consensus items adopted in the Plan to help identify any items which should be removed from future Plans due to staleness.

C. Whether to Require the SAG to Address How Section 16-111.5B Programs can be used to Expand Section 8-103 EE Programs that have not yet been Approved by the Commission [Section 7.1.4]

Both the IPA and ComEd propose changes to the ALJPO that serve to clarify the issue that should be addressed through SAG workshops regarding how expansions of not-yet approved Section 8-103 energy efficiency programs could be included in next year's procurement plan. (IPA BOE, 9; ComEd BOE, 4.) Staff has no objection to the changes proposed by ComEd and the IPA on this issue. (Id.) In comparing the changes proposed by ComEd and the IPA, Staff believes the IPA's proposed changes may result in more productive SAG workshops in terms of reaching consensus on a viable solution for next year's plan. Specifically, the IPA's proposed changes to the order provide more guidance to the SAG in terms of specific solutions that should be considered, stating that these workshops "should consider solutions such as the conditional approval of Section 8-103 program expansions in the IPA's 2017 Plan and potential contractual mechanisms to accommodate uncertainty present through an unapproved Section 8-103 portfolio." (IPA BOE, 9.) Since the Commission did not contemplate "conditional approval" as a potential solution in its Order entered in Docket No. 13-0546, Staff believes having such language

in the Commission's final order in this proceeding would make clear to all parties that "conditional approval" should be considered a potential solution that deserves attention in the SAG workshops. For these reasons, Staff respectfully requests that pages 87-88 of the ALJPO be modified consistent with the IPA's proposed language changes set forth on page 9 of the IPA BOE. (IPA BOE, 9.)

D. Whether Ameren's Adder to its TRC Analysis for Administrative Costs in EE Programs Adequately States what its Actual Administrative Costs Are [Section 7.1.5.2]

Ameren, ComEd and the IPA take exception to the ALJPO on the issue of administrative costs being added to Total Resource Cost ("TRC") test analysis. The IPA's exception is one of clarification. (IPA BOE, 10-11.) Staff has no objection to it. Ameren's and ComEd's exceptions are more substantive in nature. ComEd argues that its position for the rejection of Staff's proposal was based upon Staff making its proposal in its Response to Objections. (ComEd BOE, 4-6.) ComEd argues that Staff's proposal was untimely and therefore it should be rejected. Contrary to ComEd's claim, Staff's proposal was not untimely. Staff's proposal was made in Staff's Response to arguments made by Ameren in its Objections. Staff's proposal was therefore made at the procedurally appropriate time. However, since ComEd is certainly free to argue that Staff's proposal was untimely, Staff does not object to ComEd's exception setting forth ComEd's position on an issue. However, a Commission conclusion on this issue should not be based upon ComEd's faulty argument. The ALJPO appropriately does not do so.

The second part of ComEd's Exception 2 is as follows:

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, and, as ComEd

noted, it is unclear what Staff proposes with respect to additional reporting and whether it is needed. These topics should be thoroughly addressed and determined with specificity in workshops conducted by the SAG.

(ComEd BOE, 6.) Staff supports this second part of ComEd's Exception No. 2, since identifying potential issues like "additional reporting" in the final order will make the SAG workshop more likely to be successful in addressing any outstanding issues.

Ameren, in its Exception No. 3, argues that the allocated costs of Ameren's potential study should be included in the TRC test. (Ameren BOE, 9.) Ameren argues that excluding the costs skews the TRC test results and overstates the cost effectiveness of programs. (Id.) Staff addressed this issue in its Response. The potential study costs are not incremental to any particular program, because Ameren will incur the costs whether or not it implements programs. Since the potential study's costs are not incremental, they should not be included in the program TRC analysis. (Staff Response, 13.) However, the costs should be tracked and included as a separate line item, so that the Commission is aware of the costs and their impact on rates can be considered. (Id.) Based upon the above and the arguments made in Staff's Response, Ameren's Exception No. 3 should be rejected.

Based on Ameren's clarification that the modification the IPA made to Ameren's administrative cost adder is not entirely composed of the costs Ameren estimates for its potential study (Ameren BOE, 7), Staff supports deletion of the end of the second sentence of the Commission Analysis and Conclusion section on page 91 of the ALJPO to better reflect the record on this issue, as follows: "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.~~"

E. 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 [Section 7.1.5.3]

The IPA, ELPC and the AG all take exception to the ALJPO for not including in the Plan two programs that would exceed the cost of supply for Ameren. (IPA BOE, 11-16; ELPC BOE, 5-8; AG BOE, 2-10.) They argue that the ALJPO's conclusion is inconsistent with Section 16-111.5B of the PUA. The Commission should reject the parties' arguments. The plain language of the PUA does not support the parties' position. Section 16-111.5B(a)(4) of the PUA, states:

The Illinois Power Agency shall include in the procurement plan prepared pursuant to paragraph (2) of subsection (d) of Section 16-111.5 of this Act energy efficiency programs and measures it determines are cost-effective and the associated annual energy savings goal included in the annual solicitation process and assessment submitted pursuant to paragraph (3) of this subsection (a).

220 ILCS5/16-111.5B(a)(4). The word "all" does not appear in Section 16-111.5B(a)(4), yet the IPA, AG and ELPC read that section as if it does. That section does not state that the IPA shall include in the plan all cost effective energy efficiency programs and measures it determines are cost effective. It merely requires energy efficiency programs and measures included in a plan to be cost effective. In terms of formal logic, cost effectiveness is a necessary but not a sufficient condition for inclusion in a plan.

Next, Section 16-111.5B(a)(5) of the PUA, states:

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

220 ILCS 5/16-111.5B(a)(5). This section of the PUA also does not require all cost effective energy efficiency programs and measures to be included in a procurement plan. Rather,

this section requires programs and measures to be included in the procurement plan “if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act.” (Id., emphasis added.)

In response to the IPA’s argument that the ALJPO is using a new unvetted test develop by Ameren (IPA BOE, 11), Staff disagrees. A utility analyzing whether programs and measures exceed the cost of supply is not subjecting the programs and measures to a new test. Rather this analysis is a component of a thorough determination of whether including the programs and measures in the plan meets the long established standard set forth in Section 16-111.5(d)(4) of the PUA which requires a showing that the proposed procurement will "ensure adequate, reliable, efficient, and environmentally sustainable electric service at the lowest cost over time, taking into account any benefits of price stability." 220 ILCS 5/16-111.5(d)(4). It should be noted that this long established standard set forth in Section 16-111.5(d)(4) of the PUA is explicitly referenced in the Commission approval directive related to the energy efficiency programs set forth in Section 16-111.5B(a)(5) of the PUA. Clearly, including in a procurement plan programs and measures that would cost Ameren customers more than procuring the supply does not meet such a standard.

Finally, as Staff discussed in its Objections to the IPA Plan and its Reply, while all the programs or measures included in the Plan must be cost-effective using the Illinois TRC test, the fact that the statute sets forth a number of additional analyses⁴ to include

⁴ The additional analysis requested include among other things: (1) analysis showing that the new or expanded cost-effective energy efficiency programs or measures would lead to a reduction in the overall cost of electric service, and (2) analysis of how the cost of procuring additional cost-effective energy efficiency

with the utilities' energy efficiency assessments shows that the IPA and the Commission should consider information other than the results from the TRC test when determining which programs or measures to approve as part of a procurement plan. (Staff Objections, 9; Staff Reply 9.) Those analyses are relevant when applying the standard set forth in Section 16-111.5(d)(4) of the PUA. The opposite cannot be true; otherwise, it would mean that the legislature requires utilities to perform totally irrelevant and pointless analyses, only to have them disregarded by the Commission. In Illinois, it is a well-established rule of statutory construction that courts shall avoid any construction that renders a statute meaningless or void. (Portwood v. Ford Motor Co., 292 Ill. App. 3d 478, 487, 685 N.E.2d 941, 947 (1997) aff'd, 183 Ill. 2d 459, 701 N.E.2d 1102 (1998), citing Hernon, 149 Ill.2d at 195, 172 Ill.Dec. 200, 595 N.E.2d 561, citing Harris v. Manor Healthcare Corp., 111 Ill.2d 350, 362–63, 95 Ill.Dec. 510, 489 N.E.2d 1374 (1986)). Because we must presume the legislature did not intend to adopt a meaningless provision, we cannot accept the parties' position to ignore the fact that the programs are expensive and exceed Ameren's estimate of the cost of supply. A Commission decision in this proceeding clarifying that the Commission has authority to reject energy efficiency programs for reasons other than not passing the TRC test is warranted. There are strong differences of opinion among the parties on this topic, as is evident based on the filings of the AG, ELPC, IPA, Ameren, and Staff in this proceeding. Staff notes that this topic has been addressed on a number of occasions through workshops and given the fundamental differences among the parties on this issue, the consensus reached through the workshops is that the Commission should

measure compares over the life of the measures to the prevailing cost of comparable supply. (220 ILCS 5/16-111.5B(a)(3)(D)-(E).)

make the decision, as reflected in the consensus language on page 35 of the ALJPO which states: “The Commission should determine how the additional information provided pursuant to Section 16-111.5B (a)(3)(D)-(E) should be used (i.e., litigate).” Thus, Staff urges the Commission to retain the ALJPO’s conclusion that “[t]he phrase ‘to the extent practicable’ is a qualifying phrase that allows this Commission to exercise judgment and flexibility.” (ALJPO, 96.)

Furthermore, the Commission should reject the IPA’s position that the programs are not expensive. (IPA BOE, 18.) As reflected in the TRC results presented in the Plan and reproduced in the IPA’s BOE, the two programs at issue barely pass the TRC test and indeed they have the lowest TRC ratios out of all the programs the IPA proposes to have included in the Plan for Ameren. Therefore, as Staff argued in its Objections and Reply, the Commission should consider passing the TRC test to be a minimum requirement in deciding whether the programs or measures should be approved as part of the Plan. (Staff Objections, 9; Staff Reply 9.) Based upon all of the above, the Commission should not approve the two less competitively priced energy efficiency programs and should reject the IPA’s, ELPC’s and AG’s exceptions on this issue. Further, as noted in Staff’s Objections, Commission rejection of the two costlier programs will send a clear signal to bidders that they should put forth competitive pricing in next year’s RFP process, which is beneficial to ratepayers.

F. Whether to Exclude Programs that ComEd has Determined are “Performance Risk” Programs from the Plan [Section 7.1.6.4]

ComEd takes exception to the ALJPO on the issues of the level of scrutiny for Section 16-111.5B energy efficiency vendors and the directive to ComEd to conduct future

TRC analysis in the manner in which Ameren performs this analysis. (ComEd BOE, 7-9.) The Commission should reject ComEd's exceptions for the reasons set forth below. Instead, the Commission should adopt Staff's recommended substitute language set forth on page 8 of Staff's BOE in order to (1) avoid ambiguity and negative unintended consequences, (2) fairly represent Staff's position, and (3) ensure compliance with the statutory minimum requirements for approval of Section 16-111.5B energy efficiency programs. (Staff BOE, 4-8.)

The ALJPO states that "ComEd is directed to conduct future TRC analyses in the manner in which Ameren performs this analysis." (ALJPO, 103.) Staff agrees with the ALJPO finding on this issue, but took exception with the ALJPO for approving the performance risk programs in this proceeding that are based on significantly flawed TRC results. (Staff BOE, 5-6.) ComEd argues for removal of the language directing ComEd to perform an independent TRC analysis of the bids in the future by stating that it is unclear "how ComEd's process might differ from Ameren's, if at all." (ComEd BOE, 8.) However, the record does not support ComEd's arguments in this regard and the Commission should not remove the directive in the ALJPO requiring ComEd to perform future TRC analyses in the manner in which Ameren performs this analysis on the basis of ComEd's flawed argument. For example, Staff provided a concrete example of the differences between the TRC analyses performed by ComEd and that performed by Ameren for the exact same vendor program in Staff's Objections, stating:

Staff notes some of ComEd's TRC assumptions that do not pertain to the amount of first year savings are also unreasonable. For example, the measure life values for one of the "performance risk" programs appeared to Staff to be incorrect. Staff requested evidence to support those values, but ComEd provided no support and failed to follow-up with the vendor to obtain support in response to Staff's request. (ComEd's Resp. to Staff DR JHM

1.02.) Alternatively, when Ameren performed the TRC analysis of the same program, it followed up with the vendor and learned that the original measure life length specified in the bid was incorrect. (Ameren's Resp. to Staff DR JHM 1.) Ameren made adjustments to the TRC analysis accordingly. Thus, Staff believes the TRC analysis ComEd performed for this "performance risk" program is incorrect and overstates the likely benefits of the program.

(Staff Objections, 13.) Staff notes that ComEd's Response to Staff's Objections appears to acknowledge that there are errors in ComEd's TRC analysis of this program 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 provided no corrected TRC analysis during the course of this proceeding to correct that significant error or any of the other concerns identified by Staff in its data request issued to ComEd concerning this program.

Furthermore, Staff notes that this is not the first time the lack of scrutiny in ComEd's TRC inputs has been raised by Staff in the procurement plan dockets, and Staff believes a Commission directive to ComEd to address this concern when performing future TRC analyses is warranted. For example, the 2013 IPA Procurement Plan Order states:

In Staff's view, ComEd should strive to prudently manage the third-party programs approved under Section 16-111.5B, just as it strives to do for the third party programs approved under Section 8-103 of the PUA. Staff says the Commission has an obligation to ensure that ratepayers are protected. Staff also states that the statute requires the IPA to reduce the amount of energy to procure based on the goals approved in the procurement plan. According to Staff, if ComEd does not believe the third-party proposed goals are achievable, then it should reduce them in its cost-effectiveness analysis, consistent with the approach Ameren took. The statute is clear that the RFP process should be conducted consistent with the manner developed for Section 8-103 programs. (Staff Reply at 28.)

Illinois Power Agency, ICC Final Order Docket No. 12-0544, 248 (December 19, 2012)

(emphasis added). As clearly noted above, this is not the first time in Staff's opinion ComEd

has used unrealistic savings assumptions in the TRC analysis of the Section 16-111.5B energy efficiency programs. As noted in Staff's Objections, "ComEd has been running energy efficiency programs in its service territory for 7-8 years now, meaning ComEd has extensive expertise concerning realistic planning assumptions. ComEd should not rely solely on the information provided by vendors in performing the TRC analysis of the bids when it is aware of adjustments that would better reflect reality and reasonable inputs." (Staff Objections, 12.) Given ComEd's extensive expertise in developing energy efficiency plans and proposing energy savings goals that it believes are achievable pursuant to Section 8-103, the fact that the IPA does not have access to ComEd's proprietary TRC software, and the fact that the Section 16-111.5B energy efficiency assessments require the utilities to perform the initial cost-effectiveness analysis of the programs, ComEd is in the best position to make adjustments to the TRC analysis inputs to better reflect reality and reasonable inputs such that the Commission is provided with a best estimate of the likely cost-effectiveness of the Section 16-111.5B energy efficiency programs proposed for inclusion in the Plan. Staff believes that a Commission directive to ComEd to ensure such scrutiny occurs in future TRC analyses is warranted, especially given the differences of opinion expressed by parties on this topic in this proceeding. For example, as is evident based on the IPA's filings in this proceeding, the IPA apparently finds it reasonable to rely upon the TRC inputs proposed by the third party vendors, even in cases where the utilities find those inputs to be unrealistic, such as the four performance risk programs included in the Plan where the IPA relies upon TRC results that are knowingly based upon savings assumptions that ComEd and stakeholders found to be unrealistic. (IPA Response, 8-9.) While the IPA points out that "the Commission has previously been reluctant to tweak TRC test inputs given the limitations of a 90-day procurement plan approval proceeding" (Id.,

8.), Staff would point out that the Commission did in fact make decisions concerning TRC test inputs in the 2013 IPA Procurement Plan docket, and rejected two energy efficiency programs accordingly. Illinois Power Agency, ICC Final Order Docket No. 12-0544, 269-271 (December 19, 2012).

ComEd claims that symmetrical scrutiny, vendor compensation, and management occurs for ComEd's Section 16-111.5B and ComEd's Section 8-103 energy efficiency programs. (ComEd BOE, 7-8.) To Staff's knowledge, this is simply not the case. For example, the 2013 IPA Procurement Plan Order states:

Staff indicates it is especially concerned about ComEd's assertion that it would be unreasonable to require the utilities to meet increased goals where third-party programs were used in determining the kWh savings goal. ComEd says these third-party programs are not under the same rigor or management of ComEd's programs. ComEd believes it would be unfair to hold the utility responsible for the performance of such programs. According to Staff, ComEd's reference to "ComEd's programs" in its Response and in its Appendix C-2 is misleading because all of "ComEd's programs" are programs implemented by third parties. (Staff Reply at 27-28.)

Illinois Power Agency, ICC Final Order Docket No. 12-0544, 248 (December 19, 2012) (emphasis added). Furthermore, the independent evaluation of one of ComEd's Section 16-111.5B energy efficiency programs provides the following recommendations to ComEd:

Recommendation 2. Navigant recommends that for similar programs, ComEd conduct some form of follow-up verification over the course of the program year to ensure that all applicable data for verification is being collected and that bulbs are reaching customers. [...]

Recommendation 4. ComEd should implement quality control on 5% of the participants soon after delivery (e.g., 1 month) to verify receipt of the CFLs or any other energy product delivered via a third party.

Illinois Commerce Comm'n v. Commonwealth Edison Co., ICC Docket No. 14-0567, Staff Ex. 1.0, Attachment A, 3-4. The fact that the independent evaluation has to recommend that ComEd perform quality control and verification activities for the Section 16-111.5B

energy efficiency programs demonstrates that ComEd did not perform such activities, which is in sharp contrast to the quality control, verification, and customer satisfaction and process activities ComEd regularly performs for its Section 8-103 energy efficiency programs. ComEd's claims that such symmetrical treatment occurs is not supported by the independent evaluations of ComEd's Section 8-103 and Section 16-111.5B energy efficiency programs, and ComEd's proposed exceptions should be rejected accordingly.

G. Whether ELPC's Request that the IPA Expand its Proposed DG Procurement in early 2016 in order to Leverage Expiring Federal Tax Credits to benefit Illinois Customers Should be Granted [Section 8]

Renewables Suppliers and ELPC both take exception to the ALJPO rejection of their similar proposals for additional procurements of renewable energy credits ("RECs") from distributed generation devices ("DG") through long-run contracts.⁵ The short sighted Renewables Suppliers' and ELPC's proposals were rightfully rejected by the ALJPO in favor of a more conservative approach recommended by the IPA. Both intervenors advise the Commission to disregard the judgment of the IPA, which has appropriately warned that such contracts would place ratepayers at an elevated risk of paying more for renewable energy resources than permitted by statute. Renewables Suppliers and ELPC also ignore the other reason provided by the IPA (and relayed in the ALJPO) for rejecting their proposals: under the IPA's plan, there is no risk of significantly falling short of the statute's compliance targets. (ALJPO, 111.) Thus, additional procurements, in 2016, of long-run REC commitments will only render additional procurements in 2017 through 2019 unnecessary.

⁵ Four-year contracts (Renewables Suppliers BOE, 6-11.) and five-year contracts (ELPC BOE, 1-5.), respectively.

As their primary argument in support of their proposals, Renewables Suppliers and ELPC reference federal tax credits (for purchasers of solar power equipment) that are expected to expire in 2016. (ELPC BOE, 2; Renewables Suppliers BOE, 6.) While Staff agrees that one should generally “strike while the iron is hot” in scheduling investments in renewable energy resources, the Commission should not rely too heavily on predicting the availability of mercurial federal subsidies. By now, anyone remotely acquainted with renewable energy markets should be conditioned to expect the “on-again off-again” nature of federal tax credits. Rather than timing renewable procurements around Congressional bouts of largess, the Commission should adopt a sustainable long-run strategy, like the one proposed by the IPA. For all the above reasons, Staff recommends that the Commission sustain the ALJPO’s rejection of the Renewables Suppliers and ELPC proposals to add more DG REC procurements in 2016.

H. Whether MidAmerican’s Renewable Energy Resources should be Calculated for all of its Eligible Retail Load or Only for the Portion of Its Customer Load for which it has Requested Procurement [Section 8.1.3]

Just as Staff did, the IPA takes exception to the ALJPO on the issue of whether MEC’s Renewable Energy Resources should be calculated for all of its eligible retail load or only for the portion of its customer load for which it has requested procurement. (IPA BOE, 20-24.) MEC in its BOE supported the ALJPO and also stated that it filed comments addressing the basis for calculating the amount of renewable resources to be procured for MEC. (MEC BOE, 1.) Staff agrees with the IPA that this issue, is one of statutory interpretation. However, Staff disagrees with the IPA that the ALJPO’s conclusion is reasonable and sustainable. (IPA BOE, 21.) Staff in its BOE addressed the fact that the plain language of the IPA Act and PUA support Staff’s position and also that the ALJPO’s

conclusion is not sustainable since it relies in part upon statements not supported by the record. (Staff BOE, 10-13.) Staff will not repeat those arguments here.

With respect to MEC's general statement in support of the ALJPO, Staff stands by the argument it made in its BOE and prior filings. With respect to MEC's statement that it filed comments addressing the basis for calculating the amount of renewable resources to be procured for MEC, it is unclear to Staff what MEC means by this statement. If MEC is referring to comments MEC made on the IPA's draft plan, those comments are not part of the record in Docket No. 15-0541. In particular, the figures contained in Table 8-3 of MEC's comments on the draft plan with renewable target amounts are not part of the record in this matter and the ALJPO appropriately does not address them. However, Staff would note that in its BOE, Staff did seek clarification of the renewables targets if the Commission adopted the ALJPO's conclusion that MEC's renewables target should be based upon a portion of MEC's total supply. (Staff BOE, 15-20.) Staff recommended that in the event the Commission adopted the ALJPO's conclusion on the issue, the target was represented by a ratio equal to Forecasted energy consumption less Forecast non-IPA energy supply divided by forecasted energy consumption, adjusted for consistent treatment of energy losses. Staff alternative exception also addressed the impact of the ALJPO's conclusion on the spending limit for renewables. (Staff BOE, 19.) Staff continues to recommend its alternative exception which was supported by the affidavit of Staff member Richard J. Zuraski. Based upon all of the above, the Commission should adopt Staff's Exception No. 3. However, if the Commission accepts the ALJPO's and MEC's position that MEC's renewables target should be calculated for just a portion of MEC's load, which it should not, then the Commission should adopt Staff Exception No. 4 in the alternative, set forth in Staff's BOE.

III. CONCLUSION

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

Respectfully submitted,

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December 1, 2015

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS POWER AGENCY

**Petition for Approval of the 2016 IPA
Procurement Plan pursuant to
Section 16-111.5(d)(4) of the Public
Utilities Act**

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Docket No. 15-0541

AFFIDAVIT OF JENNIFER H. MORRIS

State of Illinois)
)
County of Sangamon)

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

1. My name is Jennifer H. Morris. 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 Reply Brief on Exceptions to the Administrative Law Judges Proposed Order ("RBOE").
3. I have personal knowledge of the facts and matters discussed in the RBOE and, to the best of my knowledge, information and belief, the facts and non-legal opinions expressed in the RBOE are true and accurate and, if sworn as a witness, I could testify concerning them.

Further affiant sayeth not.


Jennifer H. Morris

Subscribed and sworn to before me

This 30th day of November, 2015.



Notary Public

