

**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)	

REPLY BRIEF ON EXCEPTIONS OF
THE ENVIRONMENTAL LAW & POLICY CENTER

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December 1, 2015

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**REPLY BRIEF ON EXCEPTIONS OF THE
ENVIRONMENTAL LAW & POLICY CENTER**

The Environmental Law & Policy Center (ELPC) respectfully submits the following Reply to the parties' Briefs on Exceptions filed on November 20, 2015 in the above-captioned matter.

I. Renewable Energy Resources Procurement

ELPC addresses four issues related to the Illinois Power Agency's (IPA) renewable energy resources procurement: (1) whether MidAmerican's renewable energy resources procurement target should be calculated for all of its eligible retail load or only for the portion of its load for which it has requested procurement; (2) whether the Act's statutory solar and distributed generation (DG) sub-targets apply even when the overall renewable energy credit (REC) target has been exceeded for the present year; (3) whether the IPA or the utilities should be the contractual counterparty with suppliers to the planned DG procurement; and (4) whether the bids or the resulting contracts should be required to be at least 1 MW in size for the DG procurement.

A. MidAmerican's renewable resources target should be based on the utility's entire eligible retail customer load.

Both Staff and the IPA take issue with the Proposed Order's conclusion that MidAmerican's renewable resources target should be based upon the incremental supply

requirement for which the IPA conducts its procurement rather than for its entire eligible retail customer load. For the reasons stated in their Brief(s) on Exceptions (BOEs), ELPC agrees with Staff and the IPA that MidAmerican's renewable resources target should be based on the utility's entire eligible retail customer load. ELPC believes that the Commission should follow the more direct language for calculating the renewable energy resource procurement target found in Section 1-75(c)(1) rather than inferring an exception from the broad language contained in two subsections of Section 16-111.5 of the PUA. (See IPA BOE at 21.) As Staff points out, Section 1-75(c)(1) of the IPA Act is clear and provides that:

[a] minimum percentage of each utility's total supply to serve the load of eligible retail customers, as defined in Section 16-111.5(a) of the Public Utilities Act, procured for each of the following years shall be generated from cost-effective renewable energy resources.

(20 ILCS 3855/1-75(c) (emphasis added).) Furthermore, ELPC submits that when faced with competing statutory interpretations, the Commission should follow the interpretation that best furthers the overall purpose and goal of the statutes at issue. In this case, Staff's and the IPA's interpretation would result in more renewable energy resources being procured in Illinois, which would help to address the General Assembly's declaration and finding that "[e]nergy efficiency, demand-response measures, and renewable energy are resources currently underused in Illinois." (20 ILCS 3855/1-5(7).)

B. The Commission should approve the IPA's proposal to meet the Act's technology-specific sub-targets by conducting a Spring SREC procurement.

Ameren continues to oppose the IPA's proposed Solar Renewable Energy Credit (SREC) procurement, arguing that "a one year SREC procurement is not required in a year where the total REC target has been exceeded." (Ameren BOE at 14.) The statute does not support Ameren's argument to subordinate the DG and solar sub-targets to the total REC goals. The plain

language of the statute requires “at least” a specified target percentage of RECs “shall come” from solar and distributed renewable energy devices each year. (20 ILCS 3855/1-75(c)(1).) Furthermore, Ameren’s reference to ICC Docket No. 12-0544 has no bearing in this case because it ignores the specific context for the Commission’s order in that case. In 2013, the IPA’s decision to refrain from procuring SRECs was motivated by entirely different circumstances, including the “exceptionally low” volume of SRECs needed at that time and the “cloud of uncertainty” regarding projected future budgets at the time. (*See* ICC Docket 12-0544, Final Order at 52.) The circumstances are different today. As the IPA explains in its Response Comments, the circumstances of the IPA’s 2015 Plan are “more instructive” and—just as it did last year in approving that Plan—“the Commission should reject Ameren’s argument that the plain language of the IPA Act can be ignored and statutory renewable energy resource sub-targets need not be met.” (IPA Response Comments at 28.)

C. The Act requires utilities to be the contractual counterparties with suppliers to the planned DG procurement.

The ALJ’s Proposed Order (ALJPO) correctly rejected Ameren’s recommendation that the IPA become the contracting party for the procurement of DG RECs using alternative compliance payments (“ACP”) previously collected from AIC and ComEd real time pricing customers. (ALJPO at 128.)¹ As discussed extensively in ICC Docket 14-0588 and in party comments in the present case, Ameren’s position is “plainly inconsistent with state law.” (IPA Response Comments at 26.) As noted by the IPA, the requirements of Section 1-75(c) of the IPA Act, including the distributed generation sub-targets, apply to the participating utilities themselves. (*Id.* at 27.) More specifically, “the very ACP funds in question are to be used for the

¹ Only Ameren continues to raise this argument. ComEd does not object to the Proposed Order’s conclusion requiring utilities to serve as the contractual counterparty in the distributed generation procurement. (*See* ComEd BOE at 12.)

‘purchase of renewable energy resources to be procured by the electric utility.’” (*Id.* (citing 20 ILCS 3855/1-75(c)(5))).

Furthermore, Ameren is not correct that “no party has identified any harm” from its proposed approach. (Ameren BOE at 16.) To the contrary, ELPC’s Response Comments highlighted its understanding that “many developers would have trouble financing contracts that include an Illinois state agency as a counterparty,” which would “increase risk and increase costs for consumers.” (ELPC Response Comments at 4.) The Commission should affirm the ALJPO requiring the utilities to serve as the contractual counterparties for the DG procurement, as required by the statute.

D. The ALJPO correctly requires aggregation of bids into one megawatt blocks, rather than the contracts themselves.

ComEd argues that the Proposed Order “ignores” the statutory requirement regarding the aggregation of distributed generation resources “into groups of no less than one megawatt in installed capacity,” (*See* ComEd BOE at 12, citing 20 ILCS 3855/1-75(c)(1)). However, the Proposed Order does not ignore the statutory aggregation requirement. Instead, the Proposed Order correctly applies the one megawatt requirement to the IPA’s solicitation and bidding process but does not lock the counterparties into a minimum contract size. As pointed out by the IPA, this is a better reading of the statute. (IPA Response Comments at 26.) The IPA needs to retain the flexibility to prorate bids between utilities in order to best match the statutory targets and goals for each utility. Furthermore, the IPA needs flexibility to pro-rate contracts in the event that the budget is exhausted. The Commission should affirm the ALJ’s interpretation of this aggregation requirement in the law and maintain the IPA’s reference to a one megawatt “bid” requirement in the 2016 Plan.

II. Energy Efficiency Procurement

ELPC supports the Illinois Power Agency's positions on energy efficiency as outlined in its Brief on Exceptions (*See* IPA BOE 3-20), as well as the Illinois Attorney General's positions on energy efficiency as outlined in its Brief on Exceptions (*See* AG BOE 2-13), specifically on the issues of: (1) whether Ameren should be required to conduct 'total resources cost' (TRC) tests for programs that it determines existing programs; (2) whether to exclude programs from the plan when a utility claims the program's cost exceeds the cost of supply; and (3) whether Ameren's administrative costs adder to its TRC analysis adequately states its administrative costs.

A. Ameren should be required to conduct TRC test analyses for programs that it determines duplicate existing programs.

ELPC agrees with the IPA and AG and disagrees with the Proposed Order's conclusion that Ameren "should not be required to conduct a TRC analysis on bids when they have been found to duplicate existing EE plans." (See IPA BOE at 3, AG BOE at 10, PO at 89). The IPA and AG argue that the Total Resource Cost test is crucial information that the IPA and Commission need for an informed analysis of proposed energy efficiency programs. They also argue that the utilities do not have final say on whether a program is competing or duplicative—rather, that authority remains with the IPA. ELPC agrees on these points and respectfully urges the Commission to amend its order and require the utilities to conduct TRC tests on programs they determine duplicate existing programs.

B. Ameren's EE programs should not be excluded from the plan when Ameren asserts that the cost of these programs exceed the cost of supply.

ELPC agrees with the IPA and AG, and disagrees with the Proposed Order's conclusion that programs should be excluded when Ameren claims their costs exceed the cost of supply (I

IPA BOE at 11; AG BOE at 2; ALJPO at 100.) The IPA and AG argue that Illinois law makes clear that cost effective programs (as determined by the TRC test) shall be included in the IPA's annual plan, as long as they are not competing or duplicative, and are consistent with the requirements of Section 8-103. ELPC supports this position and respectfully urges the Commission to amend its order, reject Ameren's "cost of supply" test, and include the two cost-effective energy efficiency programs in the IPA plan.

C. Ameren's potential study should be excluded as an administrative cost from its TRC analysis.

ELPC agrees with the IPA and supports the Proposed Order's conclusions that Ameren's potential study should be excluded from its TRC analysis (*See* IPA BOE at 10; PO at 95). The potential study is not a cost that was incurred in administering any particular program, and the cost inputs of the TRC analysis for each individual program should reflect this.

Dated: December 1, 2015

Respectfully submitted,



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