STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Power Agency	)	
	)	ICC Docket No. 15-0541
Petition for Approval of the 2016 IPA	)	
Procurement Plan Pursuant to Section 16-	)	
111.5(d)(4) of the Public Utilities Act	)	

BRIEF IN REPLY TO EXCEPTIONS ON BEHALF OF THE ILLINOIS POWER AGENCY

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VERIFIED BRIEF IN REPLY TO EXCEPTIONS
ON BEHALF OF THE ILLINOIS POWER AGENCY

The Illinois Power Agency ("IPA" or "Agency") respectfully submits its Verified Brief in Reply to Exceptions ("RBOE") to parties' Briefs on Exceptions to the Administrative Law Judges' November 13, 2015 Proposed Order ("PO") in Docket No. 15-0541, the IPA's petition for approval of its 2016 Procurement Plan ("Procurement Plan," "Plan," or "2016 Plan").

Briefs on Exception were filed by Commonwealth Edison Company ("ComEd"), Ameren Illinois Company ("Ameren"), Illinois Commerce Commission Staff ("Staff"), the Environmental Law and Policy Center ("ELPC"), two renewable energy suppliers ("Renewable Suppliers"), and the Office of the Attorney General ("AG"). All exceptions concern the Proposed Order's conclusions related to the approval of incremental energy efficiency ("EE") programs pursuant to Section 16-111.5B of the Public Utilities Act (contained in Section 7.1 of the IPA's 2016 Plan) or renewable energy resource procurement (contained in Chapter 8 of the IPA's 2016 Plan), and replies to exceptions are grouped by those two topics below.

I. INCREMENTAL ENERGY EFFICIENCY PROGRAMS (SECTION 7.1)

A. Approval of Consensus Items from Prior Workshops

The IPA appreciates the Proposed Order's acceptance of arguments made by the IPA and Staff that consensus items reached in Commission-ordered workshops should remain in place. Because Section 16-111.5B leaves many implementation details open for interpretation, consensus around the law's implementation is essential to developing firm expectations for all stakeholders. The IPA, with the assistance of Staff's comments on the draft Plan, thus compiled prior years' consensus items (from workshops held in 2013 and 2014) and has specifically requested that such items a) be approved once again and b) be approved for prospective application. The Proposed Order wisely determined that these expectations should remain fixed going forward.

At various points in this proceeding, Ameren has argued that such items are "stale" and/or "contradictory." Based upon its Brief on Exceptions, it appears that Ameren now finally acknowledges that no consensus items requested for approval are in fact "contradictory." While Ameren now offers that it may "withdraw its staleness objections" with the adoption of certain language, the simple fact that Ameren has never identified *any* specific consensus item as "stale" or otherwise unfit for approval—let alone explained why that item should be rejected—should alone provide sufficient support for rejecting such "staleness" arguments straightaway.

Staff and Ameren raise two specific arguments in BOEs. First, Staff requests that the Commission "clarify that by keeping the consensus items in the Plan, the Commission is actually approving and adopting those consensus items." (Staff BOE at 3-4). While the IPA believes that the Proposed Order's existing language would have that effect, to the extent any parties may be confused, the IPA is supportive of further clarification consistent with Staff's request.

Second, Ameren requests that the Commission make "clear" that "in accepting consensus items recommended for 'approval,' the Commission does not bless using the Final Order in this proceeding as a roadblock to future progress." (Ameren BOE at 5). As Ameren has identified no specific consensus item that could serve as a "roadblock" or explained generally how giving parties certainty through to the 2017 Plan proceeding would thwart rather than encourage progress, the IPA does not understand Ameren's concerns or support its proposed revisions. As the IPA indicated in its Reply, "consensus items approved in this proceeding should apply to the present proceeding, the development of RFPs for the 2017 Plan, the review and evaluation of 2017 Plan programs, and utility submittals next July . . . [o]nce the draft 2017 Plan is published for comment, consensus items should again be revisited." (IPA Reply at 8-9). At that time, if Ameren determines that any consensus item is serving as a "roadblock," it should identify the specific problematic item and explain the basis for its concern rather than making blanket arguments to disregard all items previously agreed to by parties.

B. Inclusion of Programs Labeled as "Performance Risk"

The Proposed Order correctly concluded that cost-effective energy efficiency programs labeled as carrying a potential "performance risk" must not be rejected in this proceeding, noting that the "pay for performance" structure of contracts for savings provided sufficient protection for risks stemming from potentially underperforming programs.

On Exceptions, Staff continues to advocate for adjusting the TRC test results of these programs by lowering the TRCs to the point where the programs would not be cost-effective, and thus not included in the Plan. As the IPA explained in its Response to Objections:

> [T]he Commission has previously been reluctant to tweak TRC test inputs given the limitations of a 90-day procurement plan approval proceeding. As a result, arguments such as those presented last year for including demand reduction-induced price effects ("DRIPE") as a benefit (supported with published literature detailing its methodology and justifying its inclusion), while "intriguing," were still rejected. Staff's approach is far more problematic than that, however. (Docket No. 14-0588, Final Order dated December 17, 2014 at 224). Rather than proposing any salient mathematical adjustment to computed TRC levels, Staff proposes that any program labeled by ComEd as having a "performance risk" simply be considered to have failed the TRC. While the TRC is a mathematical calculation that requires quantifiable inputs in order to determine a numerical ratio, Staff offers no supporting analysis for why a program's costs suddenly exceed benefits, or how the magnitude of any given program's specific performance risk has changed the test result. Instead, Staff ignores those quantifiable inputs in favor of a bare conclusory statement that such programs should not have been included because they are "not cost-effective once reasonable TRC input assumptions are used." (Staff

> Objections at 12). What those "reasonable TRC input adjustments" actually are, however, is simply left to our imagination.

(IPA Response at 8-9). Against this backdrop, the Proposed Order's decision to refer this issue to workshops is wise: to the extent that any adjustments to TRC values would be justified by performance risks (an assumption that would impact <u>both</u> projected costs and benefits), quantifying such adjustments requires analysis and technical expertise unavailable in a 90-day approval proceeding. Hastily applying an unspecified outcome-driven adjustment under which all programs and possible risks are treated equally, as Staff advocates for without any supporting analysis or methodology and the Proposed Order properly rejects, would be a highly sloppy and thoughtless approach.

Further, the "performance risk" identified by ComEd and stakeholders is only just that—a risk. It is not itself *prima facie* evidence that proposed programs will not achieve projected savings, nor did any stakeholder making that identification view it as grounds for rejecting a proposed program. It was merely an identification made for informational purposes, and not a determination made for approval purposes—which is perhaps why the very entity responsible for coordinating that analysis and determination (ComEd) is not itself arguing that such risks should be grounds for rejecting otherwise cost-effective programs.

Lastly, rejecting cost-effective proposals on the basis of perceived risks could allow for missed savings opportunities simply because underlying program design and technologies are misunderstood, greatly constraining Section 16-111.5B's potential for driving innovation in new approaches to meeting load requirements. The energy efficiency industry can evolve at an extremely rapid pace—whether in terms of innovation in program design, marketing channels, or underlying technologies—and to entities accustomed to a known or conventional approach, unconventional-looking programs could appear to feature risks of non-performance. With pay-for-performance contracting, ratepayers are already largely insulated from risks associated with such programs not achieving targeted savings, leaving little to be gained by program rejection. But if these programs are rejected out of hand due to misunderstood performance risks, the potential upside of wildly successful new, less conventional programs will be lost.

C. Exclusion of Ameren Programs Based on "Cost of Supply"

For the reasons explained in its Response (IPA Response at 4-8), Reply (IPA Reply at 2-5), and Brief on Exceptions (IPA BOE at 11-19), the IPA strongly disagrees with the Proposed Order's exclusion of two cost-effective energy efficiency programs which do not pass Ameren's new, non-statutory "cost of supply" test. The IPA appreciates the arguments offered by the AG (AG BOE at 2-10) and ELPC (ELPC BOE at 5-8) on this issue; as participants in the development of the first energy efficiency portfolios and associated collaborative processes beginning in 2007 (and active participants since), these entities recognize that the Proposed Order's conclusion represents a sharp departure from long-standing practice for energy efficiency program evaluation and a clean break from the clear requirements of the law.

As the AG and ELPC explain in their filings, Section 16-111.5B of the PUA sets forth a straightforward framework for how costs and benefits of proposed energy efficiency programs are to be evaluated: the Commission is to "approve the energy efficiency programs and measures included in the procurement plan . . . if the Commission determines they fully capture the potential for all achievable <u>cost-effective</u> savings, to the extent practicable." (220 ILCS 5/16-111.5(a)(5)) (emphasis added). The law further provides that "the term 'cost-effective' shall have the meaning set forth in subsection (a) of Section 8-103 of this Act" (220 ILCS 5/16-111.5(b)), defined as measures that "satisfy the total resource cost test." (220 ILCS 5/8-103(a)). Somehow the Proposed Order ignores this linear framework in favor of imposing a new requirement that programs also not be "cost-inefficient" (PO at 100), using an unvetted new test developed by Ameren this summer which fails to consider benefits of energy efficiency programs that the law directs must be considered, resulting in the rejection of two otherwise "cost-effective" programs. The Proposed Order's approach is contrary to the standard articulated in the law, contrary prior Commission practice applying Section 16-111.5B, and must be rejected in the Final Order approving the 2016 Plan.

That statutory framework is vital to ensuring that Section 16-111.5B achieves the policy objectives for which it was adopted. As detailed by the IPA in its Reply, Section 16-111.5B provides businesses that develop innovative solutions for meeting load requirements with an important pathway for including those solutions in an IPA Procurement Plan:

> [I]t cannot be overlooked that the third parties proposing these incremental energy efficiency programs may be smaller, less-established businesses with promising new technologies for energy savings looking for a market opportunity in Illinois. For Section 8-103 programs, the utilities develop and propose portfolios and serve as program administrators for implementation. But given the budget limitations and savings targets of Section 8-103 and the discretion granted to program administrators, not all programs or companies may be chosen, and larger, well-established entities may have a natural advantage. Section 16-111.5B is in part intended to remove that discretion, providing a new pathway for programs that weren't chosen by allowing them to compete based only on the quantitative strength of their proposals—a bottom-up, rather than top-down approach designed to foster innovation. Allowing a utility to unilaterally develop a new filter for these programs and apply it to all submittals received risks shutting down that pathway and foreclosing such opportunities from being won. If "costs" can be segregated out as independently relevant to a statute's interpretation, as Ameren and Staff contend, then perhaps these adverse business impacts should be as well.

(IPA Reply at 4-5). The Proposed Order's conclusion serves to limit that pathway by allowing a utility to develop its own tests as a new ground for program inclusion. This frustrates a primary purpose of Section 16-111.5B: allowing innovative, potentially disruptive new technologies and approaches to be employed to reduce eligible retail customer load requirements regardless of whether they have the approval or support of entrenched players. Allowing those same entities veto power over program inclusion undercuts the potentially transformative power of Section 16-111.5B as a driver of disruption and innovation.

Further, at time when the Commission is considering solutions to resource adequacy challenges in MISO Zone 4 through policy sessions, the Proposed Order's approach could exacerbate such issues by restraining energy efficiency's potential for serving as a solution. While programs rejected this year through the Proposed Order's approach may only make a small contribution to resource adequacy, using more restrictive program evaluation tests in future proceedings could meaningfully limit energy efficiency's contribution in future years' Plans. In addition to being inconsistent with the law and an unjustified departure from past practice, the Proposed Order's approach should be rejected on these important policy grounds as well.

D. Multi-Year Contract Requirement

Recognizing that efforts to "fully capture . . . all achievable cost-effective savings" require contracts beyond only one-year of length, the Proposed Order adopted the IPA's suggestion that multi-year contracts be offered as part of the RFP process for the solicitation of Section 16-111.5B programs to be included in the 2017 Plan. Ameren initially objected to this proposal; on Exceptions, Ameren now only seeks clarification that multi-year bids be limited to three years so that such contracts do not exceed the length of the corresponding Section 8-103 planning cycle. While the IPA believes that more cost-effective savings are likely to fully captured through program offerings of all feasible contract lengths, including for greater than three years, Ameren's proposal is consistent with past practice and the statute's requirement that Section 16-111.5B programs be "incremental" to a Section 8-103 portfolio. The IPA thus does not object to its adoption.

E. Inclusion of Potential Study costs in Ameren's TRC Analysis

The Proposed Order correctly concluded that because costs related to Ameren's development of an energy efficiency potential study are "not . . . incurred in administering any particular program" (PO at 91), such costs should not be included in TRC tests. The logic of this conclusion is straightforward and unassailable: in weighing costs and benefits of energy efficiency programs, the law provides that the TRC test include "incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program." (20 ILCS 3855/1-10). Costs associated with the development of a potential study—which has no connection to program administration and is required to be developed whether zero, one, or fifty programs are approved—do not meet this definition. The IPA thus removed those costs from Ameren's TRC analyses and the Proposed Order upheld that adjustment.

Faced with this unassailable logic, Ameren now shifts its own logic in its Brief on Exceptions, claiming that the IPA somehow *misread* its submittal and overadjusted in removing the potential study cost. This exact adjustment was present in and explained through the IPA's draft Plan published in August, in which the IPA meticulously explained how it arrived at a 11.5% administrative cost adder for Ameren in removing the potential study cost. While Ameren disagreed with the IPA's adjustment, at no point did Ameren question how the IPA grouped those costs by percentage. Nevertheless, Ameren now claims that categories for which a percentage adder was clearly assigned in the Plan were actually outside of that percentage assignment, and thus unaccounted for by the Proposed Order's approved adjustment.

This argument is contradicted by the plain language of Ameren's submittal. Ameren's submittal classified three cost categories by percentage, and a fourth by a dollar amount (the potential study costs). The IPA removed that dollar amount and let the percentages remain, resulting in an adder of 11.5%. To arrive at Ameren's new reading of its submittal, Ameren is actually requesting that an unseen parsing phrase ("the remainder for") be read into its listing to parse cost areas that were not parsed in its submittal. But this language is absent and would create a nonsensical statement even if it were present. Ameren has failed to explain what percentage of its administrative costs would then be assigned to this new category—it cannot be the "remainder" of the full 13.58%, as then the potential study costs would be left out of Ameren's math. Stated differently, even if Ameren's newly-proposed category delineations were accurate, Ameren has failed to identify what percentage adjustment would then be required, and its proposal cannot be adopted.

F. Proposed Ameren Programs "Duplicative" with DCEO Programs

The IPA agrees with then Proposed Order's conclusion that two energy efficiency programs deemed "duplicative" of DCEO energy efficiency programs should be conditionally approved. Pursuant to Section 16-111.5B of the PUA, the Commission is required to "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)). Only conditional approval allows for the satisfaction of these standards: if DCEO's programs go unfunded or otherwise cannot be run by the Department, and these "duplicative" programs are not conditionally approved, then the "programs and measures included in the procurement plan" will not "fully capture the potential for all achievable cost-effective savings" as achievable cost-effective savings through these two programs will not be realized. Alternatively, if DCEO *does* receive funding and *will* run these programs, the Ameren programs will not be funded (having only been conditionally approved) and there is no risk of operating "duplicative" programs. As only conditional approval ensures compliance with the law in either circumstance, the Proposed Order's conditional approval of these two programs correctly balances identified concerns.

However, after discussions with DCEO officials and Ameren's counsel, the IPA believes that Ameren's alternative proposal that conditional approval be based upon a May 1, 2016 date (See Ameren BOE at 12)—rather than the date on which requests for rehearing be made, as originally proposed by the IPA and adopted in the Proposed Order—is more reasonable and should be adopted. Using this later date would allow all parties to proceed with the best possible information while providing sufficient time for adjustments. While the IPA does not support the remainder of Ameren's proposed edits to this section (Ameren has given no indication as to how its TRC analyses of these programs are incomplete or insufficient, for instance), it does support Ameren's proposed revision to the triggering date.

II. RENEABLE ENERGY RESOURCE PROCUREMENT (CHAPTER 8)

A. March Load Forecast Approval Process

On Exceptions, the Renewable Suppliers continue to argue that they must be involved in the process of approving any load forecasts used for the IPA's Spring procurement, a position argued and rejected seemingly on an annual basis. The IPA believes that the Renewable Suppliers are offering a solution in search of a problem. As explained in a prior filing:

> These changes appear designed to solve a yet-to-be-demonstrated problem, as changes to the existing load forecast and curtailment approval process are only necessary if the Commission believes that utilities' load forecasts are at risk of being manipulated so as to result in an unnecessary curtailment event. As the load forecasts filed in this proceeding are uncontested, it seems "dubious" that the utilities are actively engaging in this type of manipulation.
>
> Further, this concern also loses sight of the primary purpose of the March load forecast: updating the procurement volumes for the Spring block energy procurement. The calculations that determine if a curtailment is necessary merely flow from that purpose, and it is not in the interest of the utilities or the IPA to procure incorrect volumes of

> energy to meet eligible retail customer load. As the Commission has previously recognized:
>
>> In the 2013 procurement proceeding, the Commission observed that there have been few substantive disputes regarding the underlying load forecasts of AIC or ComEd. The Commission believes this is true primarily because load forecasting is complex, the utilities have extensive experience and expertise in the area of load forecasting and the utilities have no economic incentive to develop a biased load forecast. The Commission believes actual experience has proven these observations true and AIC and ComEd have performed quite well in developing load forecasts.
>
> (Docket No. 13-0546, Final Order dated December 18, 2013 at 197).
>
> Lastly, even if load forecasts were manipulated so as to make curtailment more likely, the existing safeguard of Staff, IPA, and Procurement Monitor approval is sufficient to prevent an unnecessary curtailment. Unlike the Renewable Suppliers, who are merely counterparties to renewable energy resource delivery contracts and have vested economic interests, each of these entities has an established statutory duty to ensure that statutory directives related to the procurement of both energy and renewable energy resources are met. While the IPA does appreciate that the utilities could have an interest in reducing their renewable resource obligations, there is simply no evidence that the proven process for updated load forecast approval and curtailment determination is insufficient to safeguard those interests.

(IPA Response at 24-25). Requiring that any updated forecasts be subject to a new comment process would be process for process-sake, layering on additional administrative burdens and costs simply so that one narrow set of interests (long-term power purchase agreement counterparties) could argue one narrow issue (potential curtailment of those agreements) when such comments would only be fruitful if those forecasts were somehow subject to manipulation.

Further, the existing approach is already clearly compliant with the requirements of Section 16-111.5(d)(4). Load forecasts were filed in this proceeding and could have been commented on through this proceeding, consistent with the law's requirements.[1] However, under the IPA's current procurement approach, multiple procurements are conducted annually (as this produces "the lowest total cost over time, taking into account any benefits of price stability"), which necessitates updated numbers for later procurements. Section 16-111.5(d)(4)'s

[1] As in prior IPA procurement plan approval dockets, no parties contested or offered comments on the load forecasts filed in this proceeding.

annual approval process language contains no express requirements for updated information; to the extent that any such requirements are implicit and Commission approval is still required, Commission pre-approval subject to a Commission-approved decision-making process involving Commission Staff is proposed. The simple question is whether the law or policy considerations *additionally* necessitate an entirely new comment process for those updates; both past practice and the plain language of the law show that they do not.

In light of the administrative burden created by this issue being raised on an annual basis, the Commission may want to consider stronger language than found in the Proposed Order setting forth that, in no uncertain terms, the existing load forecast approval process proposed again in the 2016 Plan is both sound as a matter of policy and clearly consistent with the requirements of Section 16-111.5(d)(4). While the Commission is not bound by *stare decisis* and nothing would preclude any party from contesting any issue raised by the IPA's procurement plans in a future proceeding, such a statement may signal that the calculus behind the time and expense of repeatedly litigating this issue should be revisited.

B. Expanded/Additional REC Procurements

Both ELPC and the Renewable Suppliers offer some variation of an argument that because current projections show that the renewable resources budget may have a "surplus" in future years (i.e., the 2.015% rate impact cap would not be met or exceeded through existing agreements), the IPA should conduct procurements using renewable resource budget funds either a) expanding its proposed distributed generation procurement (for which contracts must be at least 5 years in length, but proposed to use only already-collected hourly customer ACP funds) or b) conducting additional/expanded procurements to meet requirements for future years. The Proposed Order correctly rejected these proposals.

For background, the situation facing the Agency in managing the curtailment risks associated with contract terms of longer than one year can be summarized as follows:

> Section 1-75(c) of the IPA Act (20 ILCS 3855/1-75(c)) contains the state's Renewable Energy Portfolio Standard, often referred to as the "RPS." The Renewable Energy Portfolio Standard sets forth the obligations of the utilities for renewable energy resource procurement (conducted through IPA procurement processes). Under the definition found in Section 1-10 of the IPA Act, renewable energy resources may be either renewable energy credits ("RECs"), which constitute certificates representing the environmental attributes of electricity generated from renewable energy generation, <u>or</u> both RECs and the corresponding electricity itself (contracts for which are often called "bundled" contracts, as they require delivery of the "bundle" of the REC and corresponding energy).
>
> Section 1-75(c)(1) of the IPA Act provides that an increasing portion of the load requirements of eligible retail customers (i.e., residential and small commercial customers taking supply service from the utility, and not from an alternative supplier) be met through the procurement of renewable energy resources. (See 20 ILCS 3855/1-75(c)(1)). For the upcoming 2016-2017 delivery year, that amount is 11.5%, and it increases by 1.5% for each delivery year thereafter until 2025. Section 1-75(c)(2)(e) also specifies the methodology for determining the maximum amount that may be spent on renewable energy resource procurement pursuant to this section: a 2.015% rate impact cap based upon the greater of 2007 or 2011 electric rates.
>
> Because this section concerns only eligible retail customer load, both the renewable energy resource procurement targets (the actual quantity of renewable energy resources to be procured to satisfy the law's targets) and the budget available for such procurements (sometimes referred to as the renewable resources budget, or "RRB") are impacted by customer switching between utility service and alternative supplier service. More customers taking supply from alternative suppliers, as happened when a wave of municipalities adopted municipal aggregation resolutions and entered into opt-out municipal aggregation contracts, reduces both the quantity of resources needed to be procured and the budget available for their procurement.
>
> This volatility, coupled with existing 20-year bundled agreements for energy and renewable energy credits (commonly known as the 2010 Long Term Power Purchase Agreements, or "LTPPAs") entered into pursuant to the 2010 IPA Procurement Plan, is highly influential on the IPA's proposed renewable energy resource procurement approach. In the previous three plan approval dockets, the IPA has sought pre-approval from the Commission for "curtailment" of the existing long-term agreements, meaning that the utilities' financial obligations and the suppliers' delivery obligations would be "curtailed" if that was necessary to maintain compliance with the statutorily mandated rate impact cap. At the peak of switching impacts from municipal aggregation, curtailment was required for long-term renewables contracts with ComEd, as the rate impact associated with renewable energy resource obligations was spread across too few customers (or, more accurately, too little load) in ComEd's service territory to meet existing contractual requirements. While the load forecasts submitted by the utilities for the 2016 Plan indicate that a curtailment event is unlikely, the "low" load forecast submitted by Ameren would require curtailment, and the future of customer switching in Illinois generally remains highly uncertain.

(IPA Response at 19-20). As the potential curtailment of *existing* agreements looms over any discussion of renewables procurements, these challenges would only be exacerbated by layering on *new* contracts lasting beyond the upcoming delivery year.

Making matters more complicated, the Renewable Suppliers insist that existing agreements be senior to any new contracts should a curtailment event occur.[2] While intuitively sensible, this would be extremely problematic: say a curtailment of 10% of existing agreements is required in two years in order to maintain consistency with the statutory rate impact cap. That 10% curtailment event would then likely wipe out <u>any</u> payments to (or deliveries from) successful bidders in the IPA's procurement event creating these new longer-term contracts. Any reasonably sophisticated bidder will price this risk into their bids (or simply choose not to participate), resulting in inflated prices and reduced competition. Rather than purchasing RECs at a discount, as ELPC contends in filings, purchases would be made with a significant financial risk premium—to the extent they could be purchased at all. By increasing the cost of RECs without any corresponding value added, this proposed approach stands directly contradictory to the mandate that the IPA's procurement plans achieve "the lowest total cost over time, taking into account any benefits of price stability." (220 ILCS 5/16-111.5(d)(4)).

Managing these risks is why the IPA has insisted on using ACP funds collected from hourly-pricing customers (already-collected funds not subject to switching risk) for its distributed generation procurements for ComEd and Ameren, under which contracts must be at least 5 years in length. While the IPA recognizes the potential for longer-term contracts to drive new generation development and thus drive down long-term renewables procurement

[2] As the two entities participating in this litigation as "Renewable Suppliers" are counterparties to the existing 2010 long-term power purchase agreements, it is not surprising that the Renewable Suppliers insist on this protection; if new long-term agreements were added and all contracts were instead treated equally, the likelihood of a curtailment event impacting existing LTPPA holders would increase significantly.

compliance costs, conducting procurements for contracts beyond the delivery year using renewable resource budget funds would create significantly increased curtailment risks and high resultant risk premiums at best, and produce a failed, unsubscribed procurement event at worst. Instead, the IPA believes that given the amount of renewable resources already under contract using renewable resource budget funds, the far more responsible approach is deferring decisions on how best to meet future years' targets to future years' plans, when it will have better information on available funding and procurement target amounts. As the Proposed Order properly recognizes these risks and arrives at the same conclusion, its approach must be upheld.

C. Technology-Specific Sub-Target Procurements

In approving the IPA's proposed procurement of renewable energy credits from photovoltaic systems to meet the technology-specific requirements of Section 1-75(c)(1), the Proposed Order correctly concludes that "the plain language of the Section 1-75(c)(1) requires technology-specific targets by dates certain." (PO at 114). On Exceptions, Ameren contests this conclusion, believing such a procurement to be unnecessary. The relevant portion of the IPA Act reads as follows:

> To the extent that it is available, at least 75% of the renewable energy resources used to meet these standards shall come from wind generation and, beginning on June 1, 2011, **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. Of the renewable energy resources procured pursuant to this Section, **at least** the following percentages **shall** come from distributed renewable energy generation devices: 0.5% by June 1, 2013, 0.75% by June 1, 2014, and 1% by June 1, 2015 and thereafter.

(20 ILCS 3855/1-75(c)(1)) (emphasis added). The law is clear: the renewable energy resource mix "shall" be achieved at "at least" a statutorily prescribed percentage. Assuming available funding under Section 1-75(c)(2)(E)'s rate impact cap, the IPA has a statutory obligation to meet enumerated targets for the procurement of renewable resources from photovoltaics and

distributed generation—*even if* overall REC targets are being met. The Commission correctly concluded the same last year in Docket No. 14-0588, and the Proposed Order adopts the same conclusion this year.

Faced with clear statutory language and Commission precedent to the contrary, Ameren cites the IPA's 2013 Plan as evidence that these requirements are merely discretionary. As the IPA has repeatedly explained, the circumstances surrounding the 2013 Plan are simply not instructive for the 2016 Plan. The IPA's 2013 Plan was developed in the midst of rapid customer switching to alternative retail electric suppliers through hundreds of municipalities statewide suddenly entering into new opt-out municipal aggregation agreements. This unprecedented rate of switching left a cloud of uncertainty over projected procurement budgets, including whether the renewable resources budget would be sufficient to cover existing obligations. Eventually, not only were renewables procurement budgets fully exhausted through existing long-term agreements, but those contracts needed to be curtailed to maintain consistency with the rate impact cap. Conducting additional procurements in that environment—with little to no budget for such procurements to be conducted, and enormous uncertainty around whatever small amount of funds would be projected to be available—would have been borderline impossible. Yet Ameren makes no arguments that the current environment features the instability, uncertainty, and budget scarcity found three years ago, the very circumstances which necessitated that no new procurements (energy, capacity, or renewables) be proposed.

While the IPA does not believe that the current retail choice environment features sufficient stability for new mid-term to long-term contracts, the current environment clearly features budgets stable enough to confidently conduct one-year renewable energy resource procurements. Further, based upon the statutory language quoted above, such procurements must be conducted to maintain consistency with the directives provided by Illinois law.

On Exceptions, Ameren also makes a series of misleading statements about the IPA's distributed generation procurement confusingly presented as evidence that discretion under Section 1-75(c)'s requirements is routinely exercised. To be clear, the differential approaches about which Ameren complains are a function of *the law itself*, and <u>not</u> discretion exercised by the IPA. Illinois law requires that "procurement of renewable energy resources from distributed renewable energy generation devices shall be done on an annual basis through multi-year contracts of no less than 5 years;" this is not true for SREC procurements. (20 ILCS 3855/1-75(c)). Illinois law requires that bids in distributed generation procurements be aggregated "into groups of no less than one megawatt in installed capacity;" no such requirement exists for SREC procurements. (Id.). Illinois law allows that SRECs (or any other non-DG RECs) may be "purchased elsewhere" if unavailable "in Illinois and in states that adjoin Illinois" (Id.); alternatively, a "distributed renewable energy generation device" must be "interconnected at the distribution system level of either an electric utility as defined in this Section, an alternative retail electric supplier as defined in Section 16-102 of the Public Utilities Act, a municipal utility as defined in Section 3-105 of the Public Utilities Act, or a rural electric cooperative as defined in Section 3-119 of the Public Utilities Act"—all of which <u>must be located in Illinois under the definitions in those statutes</u>. (20 ILCS 3855/1-10). Challenges associated with meeting distributed generation procurement requirements extend from *the IPA's insistence on following the strictures of the law*, and not from the IPA's discretionary "design strategies" as Ameren incorrectly claims.

D. 1 MW Bid Requirement

ComEd objects to the Proposed Order's adoption of a one megawatt bid requirement applying to the proposed distributed generation procurement, believing that this minimum threshold should apply to the resulting contracts rather than to the bids themselves. The relevant provision of the law reads as follows:

> In order to minimize the administrative burden on contracting entities, the Agency shall solicit the use of third-party organizations to aggregate distributed renewable energy into groups of no less than one megawatt in installed capacity. These third-party organizations shall administer contracts with individual distributed renewable energy generation device owners.

(20 ILCS 3855/1-75(c)(1)). The IPA believes that having this requirement apply to the bid rather than the contract, as done through the Proposed Order, is more consistent with the plain language of the law. In an IPA procurement, it is bids that are "solicit[ed]," not contracts. It is the bids themselves that feature organization (or "aggregation") of distributed renewable energy "into groups" for selection by the procurement administrator; contract execution occurs only after that initial solicitation and aggregation process, and only after Commission approval of procurement results. Based upon how this language matches with the IPA's procurement process, the IPA believes this threshold is intended to apply to bids received.

While the IPA appreciates that this language also exists "to minimize the administrative burden on contracting entities," that burden is still significantly minimized through requiring one megawatt bids. Under a one megawatt *bid* requirement, although resulting contracts may be for less than one megawatt, the number of resulting contracts to administer will be significantly limited if the only bids considered are at least one megawatt in size. Bids of at least one megawatt may then be prorated between utilities or executed for only a portion of RECs bid, but as only bidders able to participate at scale may qualify, the number of resulting contracts and counterparties (and resultant administrative burdens) will be effectively "minimized."

The IPA is also supportive of ComEd's proposal that executed contracts feature a single blended price per product size and believes that this may further reduce administrative burdens. Although allowing for differential pricing for each renewable energy system composing a bid (or for some smaller grouped block of systems contained therein) would promote participation, thus increasing the likelihood that procurement goals are met at the lowest possible costs, that approach would also increase utility administrative burdens at odds with considerations expressed in the law. Further, as ComEd explains, its single price-per-product type proposal may limit any incentives for gaming between product categories, an important consideration for ensuring that the product size requirements of the law are met.

E. IPA as Counterparty to DG Contracts

On Exceptions, Ameren repeats its argument rejected in last year's proceeding and rejected in the Proposed Order once again this year that administrative convenience necessitates having the IPA serve as the counterparty to Section 1-75(c) distributed generation procurement contracts. In so doing, Ameren glosses over the significant and immutable legal barriers to this approach—barriers repeatedly raised by the IPA (and supported by Staff), but never substantively answered by Ameren or any other party—in favor of dismissing such concerns as loose ends that "could be explored and addressed" during "development and implementation."

Clear inconsistency with the governing law is not simply an implementation issue to "explore and address;" it is grounds for rejecting a plainly illegal proposal. "[A]dministrative bodies . . .are creatures of statute and possess no general or common law powers. Any power or authority claimed by an administrative agency must find its source within the provisions of the statute by which the agency was created." (Vuagniaux v. Dept. of Professional Regulation, 208 Ill.2d 173, 187-188 (2003)). The IPA has only those powers specifically granted to it by law, and it cannot simply assume new obligations without corresponding authority. Section 1-56(i) of the IPA Act, which enables the IPA to conduct the supplemental photovoltaic procurements that Ameren's proposal seeks to expand, only allows the IPA to enter into contracts for up to a designated amount ($30 million) from a designated source (the Renewable Energy Resources Fund). (See 20 ILCS 3855/1-56(i)). Nothing found in Section 1-56(i) of the IPA Act, or elsewhere in the IPA Act or the PUA, empowers the IPA to enter into *additional* contracts using alternative compliance payments ("ACPs") previously collected from Ameren's real-time pricing customers, or to purchase additional renewable energy credits using any source other than the Renewable Energy Resources Fund.

Further, the requirements of Section 1-75(c) of the IPA Act apply only to the participating utilities themselves (who are then required to "retire all renewable energy credits used to comply" with those standards (20 ILCS 1-75(c)(4)), with the IPA acting as an independent agency developing procurement plans and conducting procurement events to ensure compliance. More specifically, the very funds in question are to be used for the "purchase of renewable energy resources <u>to be procured by the electric utility</u>." (20 ILCS 3855/1-75(c)(5)) (emphasis added). These issues are not merely "implementation" concerns; these are the specifically enumerated roles carefully spelled out in the law, and the utility's role cannot be simply assigned to a state agency. As Ameren's proposed approach would run afoul of these requirements, the Proposed Order's rejection of Ameren's arguments must be maintained.

F. Calculation of MidAmerican Renewable Procurement Targets

As explained in its Brief on Exceptions, the IPA agrees with Staff's interpretation of how to calculate MidAmerican's renewable energy resource procurement target. Because the far more direct provisions of the governing law (specifically, how to calculate the target at issue) are found in Section 1-75(c)(1) of the IPA Act, the language found in that portion of the statute is controlling and the Proposed Order's conclusion should be revised to reflect that MidAmerican's renewable energy resource procurement target is based on its eligible retail customer load.

If the Proposed Order's conclusion stands and MidAmerican's procurement target is based on only that portion of eligible retail customer load for which the IPA conducts energy procurements, Staff's Brief on Exceptions raises two important questions. The first question concerns whether the rate impact cap found in Section 1-75(c)(2)(E) should also be calculated based upon only a portion of MidAmerican's eligible retail customer load rather than on its entire load. To the IPA, a conclusion to limit the application of Section 1-75(c)(1)'s MidAmerican procurement targets (as done in the Proposed Order) is effectively a conclusion stating that the implied exception found in Section 16-111.5(a) and (b) causes <u>all</u> of Section 1-75's requirements to apply only to the IPA-procured portion of MidAmerican's load requirements—and thus the rate impact cap and resultant procurement budget would be correspondingly adjusted downward. Concluding otherwise would mean that the Proposed Order's implied exception in Section 16-111.5(a) and (b) applies only to part of Section 1-75: with "supply to serve the load of eligible retail customers" (20 ILCS 3855/1-75(c)(1)) referring to <u>only the portion</u> of eligible retail customer load for which the IPA conducts procurement, but then "amounts paid by eligible retail customers" (20 ILCS 3855/1-75(c)(2)(E)) referring to MidAmerican's <u>entire</u> eligible retail customer base. Perhaps if the Proposed Order's basis for MidAmerican's exception were found in the language of Section 1-75(c)(1), differential calculations between the two phrases would be sensible. But because an exception gleaned from the broad language of Section 16-111.5(a) and (b) cannot expressly parse how the requirements of Section 1-75 would be differentially applied, it requires a consistent approach to targets, costs, and any other Section 1-75 requirements in which "eligible retail customers" are referenced.

The second issue concerns how the procurement target would then be calculated for MidAmerican if the Proposed Order's conclusion is maintained. As the IPA's filed Plan determined that this target should be based on MidAmerican's entire eligible retail customer load, it provided only an estimate for what that target might be if it were based only on the incremental amount. The IPA agrees with Staff's methodology explained in point 4 of the questions raised in its Brief on Exceptions and specifically recommended by Staff in the sentences that follow. (See Staff BOE at 17-19).

G. Use of the Renewable Energy Resources Fund

On Exceptions, the Renewable Suppliers continue to argue that the Commission should make recommendations to the IPA on how it should use the Renewable Energy Resources Fund ("RERF"), a fund "administered by the Agency to procure renewable energy resources." (20 ILCS 3855/1-56(b)). As the IPA has explained throughout this proceeding, use of the Renewable Energy Resources Fund is not an issue in this litigation:

> As the IPA develops its plans for any use of the RERF, it will provide opportunities for stakeholders to provide input and comment on the most efficient and appropriate use of the Renewable Energy Resources Fund and potential coordination with procurements approved in this proceeding. However, as the Commission held in Docket No. 12-0544 and as ELPC itself acknowledges, "it is clear the Commission has no authority over disbursements from the RERF collected on behalf of ARES customers." (Docket No. 12-0544, Final Order dated December 19, 2012 at 113). The IPA strongly believes that a Commission Order approving its Procurement Plan should concern only those matters over which the Commission has jurisdiction, and that it would be inappropriate for the Commission to offer recommendations on planned disbursements from that fund.

(IPA Response at 30-31). Recommendations related to the IPA's use of the RERF in prior Commission proceedings came only in the context of the Commission's jurisdiction being placed at issue, at which point the Commission made the determination quoted above.

The Renewable Suppliers also insist that the IPA's plans for the Renewable Energy Resources Fund ("RERF") be folded into its annual procurement plan proceeding. Setting aside that because IPA Procurement Plans are ultimately approved by the Commission, this would arguably give the Commission new jurisdiction over any strategies contained therein (inconsistent with the separation of responsibilities described above), the Renewable Suppliers misunderstand the purpose for which the IPA prepares its annual plans. IPA Procurement Plans are not intended to explain *all* of the Agency's plans for the upcoming year; instead, under Section 16-111.5 of the PUA, annual procurement plans detail how the IPA will conduct procurements to meet the load requirements of eligible retail customers. Procurements using the RERF are not used to meet the load requirements of eligible retail customers. Thus, RERF procurements are not part of the plans filed by the Agency under Section 16-111.5 of the PUA. Whatever the merits of folding all strategies for meeting all statewide load and supply requirements into a single annual planning process, this is not the approach taken in Section 16-111.5 of the PUA (or, more generally, by restructuring our state's utility sector and allowing for retail competition around supply contracts), and the IPA believes that the law should continue to be faithfully followed.

CONCLUSION

The IPA again thanks the Administrative Law Judges for their work within an extraordinarily tight timeframe and thanks the Commission (also working on a tight timeframe, with numerous year-end matters to which it also must attend) for its consideration of the issues raised herein. The IPA respectfully requests that the Commission resolve identified issues consistent with its positions articulated above.

Dated: December 1, 2015

Respectfully submitted,

Illinois Power Agency

By:
/s/ Brian P. Granahan____

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)
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VERIFICATION

Anthony M. Star, being first duly sworn, on oath deposes and says that he is the Director for the Illinois Power Agency, that the above Verified Brief in Reply to Exceptions on Behalf of the Illinois Power Agency has been prepared under his direction, he knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

Anthony M. Star

Subscribed and sworn to me
This 1st day of December, 2015

"OFFICIAL SEAL"
RUBY MORALES
Notary Public, State of Illinois
My Commission Expires April 03, 2018
Commission No. 459449

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Power Agency	)	
	)	ICC Docket No. 15-0541
Petition for Approval of the 2016 IPA	)	
Procurement Plan Pursuant to Section 16-	)	
111.5(d)(4) of the Public Utilities Act	)	

NOTICE OF FILING

Please take notice that on December 1, 2015, the undersigned, an attorney, caused the Verified Brief in Reply to Exceptions on Behalf of the Illinois Power Agency to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission in a new proceeding:

December 1, 2015

/s/ Brian P. Granahan___
Brian P. Granahan

CERTIFICATE OF SERVICE

I, Brian P. Granahan, an attorney, certify that copies of the foregoing document(s) were served upon the parties on the Illinois Commerce Commission's service list as reflected on eDocket via electronic delivery from 160 N. LaSalle Street, Suite C-504, Chicago, Illinois 60601 on December 1, 2015.

/s/ Brian P. Granahan___
Brian P. Granahan