

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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

**AMEREN ILLINOIS COMPANY’S REPLY TO BRIEFS ON EXCEPTIONS**

Ameren Illinois Company d/b/a Ameren Illinois (“Ameren Illinois” or “AIC”) submits, pursuant to 83 Ill. Admin. Code Part 200.830 and the briefing schedule established by the Administrative Law Judges (“ALJs”), its Reply to the Briefs on Exceptions filed on November 20, 2015. Ameren Illinois replies to exceptions filed by the Illinois Power Agency (“IPA”), the Illinois Commerce Commission (“ICC” or “Commission”) Staff, the Office of the Attorney General (“AG”) the Renewables Suppliers, and the Environmental Law and Policy Center (“ELPC”) related to the following issues identified by the Administrative Law Judges’ Proposed Order (“ALJPO”):

- (1) Plan Action Items 2 and 7: Whether Any LTPPA Curtailment Will Be Required for the 2016-2017 Delivery Year;
- (2) Section 7.1.3: Whether the Plan Should Include 2013 Consensus Items in this Section;
- (3) Section 7.1.4: Whether Ameren Illinois Should be Required to Conduct TRC Test Analyses for Programs that are Determined to Duplicate Existing Programs;
- (4) Section 7.1.5.2: Whether Ameren Illinois’ Adder to its TRC Analysis for Administrative Costs in EE Programs Adequately States what its Actual Administrative Costs Are;
- (5) Section 7.1.5.3: Whether to Exclude Two of Ameren Illinois’ EE Programs from the Plan When Ameren Illinois Asserts that the Cost of these Programs Exceeds the Cost of Electric Supply;

- (6) Section 8: 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; and
- (7) Section 8.4: Whether the IPA Should be the Contractual Counterparty with Suppliers to the Planned DG Procurement, and not the Utilities Themselves; Whether the Bids or the Resulting Contracts Should Be Require to be at Least 1 Megawatt in Size for the DG Procurement.

Within each topic, Ameren Illinois responds separately to each party taking a position on that issue. Ultimately, Ameren Illinois requests that the Commission adopt AIC's proposed modifications to the ALJPO set forth in its briefs on exceptions.

## **I. REPLIES TO EXCEPTIONS**

### **A. Plan Action Items 2 and 7: Whether Any LTPPA Curtailment Will Be Required for the 2016-2017 Delivery Year.**

#### **1. Reply to Renewables Suppliers**

The ALJPO is correct in its assessment that the purpose of the March load forecast update is to determine the final quantities needed for the energy procurement, and this process also allows the IPA to take into account updated load forecasts and their impact on renewable curtailments. (ALJPO at 78.) Contrary to the claims of the Renewables Suppliers, the timetable for these procurements does not allow for the filing of an updated forecast with the Commission, the filing of comments from interested parties, and a Commission determination.

Of equal importance, the Commission has previously determined on multiple occasions that the current parties involved in the collaborative consensus building process, including the IPA, Commission Staff, the utilities and the Procurement Monitor, are experts in the matter of forecasting, and they have no financial bias which would impact the review process. (*See* 12/18/2013 Final Order, Commission Docket No. 13-0546, at 197 ("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").) In its BOE, the Renewables Suppliers suggest that

they, too, have expertise that could be useful in the process when they claim that “the foursome that has previously been anointed to decide whether revised March load forecasts should be adopted do not hold a monopoly on information, expertise or market intelligence.” (Renewables Suppliers BOE at 2-4). The Renewables Suppliers also claim that, under the current process, the Commission never approves the forecast. (*Id.*)

The arguments put forth by the Renewables Suppliers miss the mark. Contrary to their claim, the Commission *does* approve the forecast, in its December order, in a manner that is consistent with the statute. The Commission has entrusted (not “anointed” as claimed by the Renewables Suppliers) a group of four unbiased parties to determine whether the March forecast represents a reasonable update relative to the December forecast. In fact, no party in this proceeding has taken the position that the Renewables Suppliers do not have “information, expertise or market intelligence.” Instead, parties have pointed out the obvious, that the Renewables Suppliers have a strong financial interest in achieving a certain outcome (i.e., achieving an eligible retail forecast which avoids curtailment of LTPPAs, while also incenting additional forward hedging of RECs). Conversely, the four parties entrusted by the Commission have no financial incentive to achieve any outcome other than compliance with the Act. Finally, the March forecast calls for consensus among these four parties, which provides another level of protection that ensures the process works effectively.

Also contrary to the Renewables Suppliers’ BOE, the point remains that the current process has worked well for years, and there is no reason to deviate from it. For all the reasons mentioned above, Ameren Illinois supports the conclusion reached by the ALJPO that the utilities will continue to provide March forecast updates that will be reviewed by the IPA, Commission Staff, the utilities and the Procurement Monitor. Assuming consensus of these

same parties, this forecast would be used in determining the final procurement quantities and the curtailment quantities under LTPPAs, if applicable. With such a finding, Ameren Illinois hopes that it will be clear that this matter has been addressed numerous times in prior Plan proceedings and the matter should be considered closed in future proceedings, such that there is no need to revisit the issue.

**B. Section 7.1.3: Whether the Plan Should Include 2013 Consensus Items in this Section.**

**1. Reply to Staff**

In its Brief on Exceptions, Ameren Illinois requested that the Final Order clarify that the 2013 consensus items, which the ALJPO adopted (ALJPO at 80-81), should not be used to block or impede the evolution of energy efficiency policy with respect to Section 5/16-111.5B programs. (AIC BOE at 5; AIC Reply at 6-7.) Previously, Ameren Illinois had opposed the inclusion of those consensus items outright, based on AIC's concern that approving positions developed in the past could lead to complications during a current and future period of historic policy development on energy efficiency. In an effort to minimize contested issues in this docket, however, Ameren Illinois suggested an alternative proposal. Ameren Illinois suggested that the prior year consensus items be "approved" only in the sense that the Commission recognize that they reflect acceptable positions, and *not* in the sense that they are the *only* acceptable positions on matters of statutory interpretation and other guidelines for implementation going forward, regardless of whether a new consensus or policy is developed.<sup>1</sup> (AIC BOE at 5; AIC Reply at 6-7.)

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<sup>1</sup> For example, the Commission recently issued the Final Order approving the State's first ever Energy Efficiency Policy Manual, which sets forth certain policies applicable to Section 5/16-111.5B programs. *See* ICC Docket No. 15-0487, Final Order (Nov. 25, 2015).

Staff's Brief on Exceptions appears to request that the Commission modify its acceptance of the consensus items in a different way:

In order to reduce any potential confusion on this issue, Staff recommends 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.

(Staff BOE at 3.) It is not clear what Staff means by “actually approving and adopting,” or how that differs from the status quo. However, to the extent Staff's proposal is inconsistent with Ameren Illinois' requested clarification, the Commission should not adopt it. Instead, the Commission should adopt Ameren Illinois' requested clarification, which would reconcile the findings in the ALJPO on other issues, like the proper interpretation of certain provisions of the Public Utilities Act, with its wholesale adoption of the 2013 consensus items.<sup>2</sup> Accordingly, the Commission should not approve Staff's recommended clarification and, instead, should clarify that a Commission finding in this docket regarding past positions taken by the parties cannot be used by a party to block or impede the continued evolution of energy efficiency policy.

**C. Section 7.1.4: Whether Ameren Illinois Should be Required to Conduct TRC Test Analyses for Programs that are Determined to Duplicate Existing Programs.**

**1. Reply to IPA**

The IPA continues to take issue with the ALJPO's finding that Ameren Illinois need not conduct a TRC analysis for duplicative programs, and, this time, it has resorted to a series of misstatements of the record that do little more than distract from the issue. It starts with the

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<sup>2</sup> For example, despite the IPA's repeated assertions that “Ameren has still failed to identify specific [consensus] items it believes are obsolete,” (IPA Response at 15; IPA Reply at 8), Ameren Illinois has made clear, from the time of its July 15, 2015, submittal to the IPA through every filing in this docket, that the purported “consensus item” stating that “Section [5/16—111.5B(a)(3)(E) can be interpreted as the Total Resource Cost (“TRC”) test.” (See IPA Plan at 91) is not correct. (IPA Petition Appendix B (Section 16-111.5B submittal)—2016 IPA Procurement Plan at 20-21; AIC Objections at 15-16; AIC Reply at 5, n.6.) Regrettably, the IPA's misstatement made its way into the ALJPO's treatment of the consensus items. (ALJPO at 80-81.) But the ALJPO's correct resolution of the Section 7.1.5.3 issue rendered the IPA's misstatements irrelevant.

headline to the IPA’s discussion: “Whether Ameren [Illinois] Should Be Required to Conduct TRC Test Analyses for Programs that *it* Determines Duplicate Existing Programs.” (IPA BOE at 3 (emphasis added).) That is a misstatement of the issue. The issue in this docket is not whether Ameren Illinois must perform a TRC analysis on bids which Ameren Illinois determined are duplicative. The issue in this docket is whether Ameren Illinois should have performed a TRC analysis on bids which the Natural Resources Defense Council, ELPC, the Department of Commerce and Economic Opportunity, Ameren Illinois, Staff, *and the IPA* determined are duplicative. The duplicative program determinations were made collaboratively on a pair of conference calls held on April 29 and May 4, 2015, and the duplicative program determinations were unanimous. (See IPA Plan Appendix B (Section 5/16-111.5B submittal)—2016 IPA Procurement Plan at 14-15, 17.) To suggest to the Commission that the determination was made by Ameren Illinois alone is disingenuous, and yet the IPA suggests it over and over again throughout its Brief on Exceptions. (IPA BOE at 3 (header), 4 (arguing the IPA must have TRC values for bids “designated by the utilities as ‘duplicative’”), 5 (“the utility’s initial determinations are merely that—initial determinations that Ameren [Illinois] chose[.]”)) The IPA’s position on this issue is therefore inconsistent with the collaborative process that actually took place, and the Commission should set it aside.

As Ameren Illinois explained in its Reply (AIC Reply at 17-19), in last year’s procurement plan docket (No. 14-0588), certain parties requested more stakeholder involvement in the bid review process, and the Commission agreed. See Final Order, Docket No. 14-0588, at 225. Ameren Illinois therefore incorporated the various stakeholders, *including the IPA*, into its review process, and they unanimously came to the conclusion that certain programs were duplicative of existing Section 5/8-103 programs. In other words, IPA had *already reviewed* the

programs in question by the time of Ameren Illinois' July 15 Submittal to the IPA, and the IPA had *already determined*, along with the other stakeholders, that the programs were duplicative. (AIC Reply at 18; IPA Petition Appendix B (Section 5/16-111.5B submittal)—2016 IPA Procurement Plan at 14-15, 17.) Indeed, the IPA *still* agrees that the programs in question are duplicative. (Plan at 97-99.) The process therefore *has* changed, as a result of a request by stakeholders in the last procurement plan docket, and the IPA's position does not make sense (and could be misleading) in light of the changes. The ALJPO astutely noted as much (ALJPO at 89 ("because the process has changed, this issue might be moot")), and the Commission should adopt its conclusion.

Beyond the IPA's incorrect "process" argument, the IPA goes negative through the use of rhetoric that is not supported by the facts. Specifically, the IPA states that it is "telling" that Ameren Illinois did not describe the impact of the change in process until its Reply brief, but there is nothing suspicious or wrong about that. As the IPA should recognize, Reply briefs do just that—*reply* to positions taken by other parties. The IPA did not file comments or objections to its own Plan, so the first time it presented its mistaken process-based argument in this docketed proceeding was in its Response brief. (IPA Response at 13-14.) To be sure, the IPA Plan summarized the four-part process to determine programs duplicative of a utility's Section 5/8-103 programs, as set forth by the Commission in Docket No. 13-0546 (Plan at 98), but it also explicitly acknowledged the role of the stakeholder review committee (of which the IPA was a part) in the duplicative program determination for this year's planning process. (*Id.* ("The IPA concurs with the determinations of Ameren Illinois and its Stakeholder review committee that the following programs meet the duplicative standard set out in previous Procurement Plans and Commission Orders.")) Thus, Ameren Illinois cannot be faulted for waiting to reply to the

IPA's argument that the duplicative determinations in this year's planning process were unilateral until after the IPA made that argument. It would have been impossible to reply sooner.

When the IPA's process points and negative rhetoric are set aside, the IPA's argument that a utility must calculate a TRC value for programs determined to be duplicative falls short on the merits. It makes no sense to expend the resources to conduct a TRC analysis on programs which, once determined to be duplicative, the Commission has instructed "should be avoided." *See* Docket No. 14-0588, Final Order (Dec. 17, 2014) at 148. The duplicative determination can and should be made *first* to avoid committing limited resources to working with bidders to assess non-duplicative bids.

Moreover, the IPA acknowledges that the process previously approved by the Commission for determining programs that would be duplicative of Section 5/8-103 programs "does not explicitly address Total Resource Cost ('TRC') calculations[.]" (IPA BOE at 4.) Yet, somehow, the IPA claims that a directive to provide the IPA with TRC analyses for programs which the IPA, in collaboration with Ameren Illinois, has already determined to be duplicative is *implicit* in the Commission's directive to provide the IPA with "all of the underlying documents." (IPA BOE at 4.) It is not. That directive means that the utility should provide the IPA with all bids and "all of the underlying documents," not that the utility must undertake a costly analysis derived from those underlying documents. Given the significant concerns raised by Ameren Illinois with respect to the unreliability of the TRC analysis of duplicative bids—concerns that have been credited by Staff (Staff Response at 9 ("Ameren [Illinois] raises several valid concerns"))—the Commission correctly has not required, and should not require, Ameren Illinois to spend the time and resources needed to perform an analysis that would not add any meaningful, reliable information to the procurement process.

At bottom, there is simply no reason for a utility—or anybody else—to calculate a TRC value for a duplicative program. The results would necessarily be muddled by the duplication, on the benefits side of the equation, of savings already being achieved by the previously-implemented program or measure, thus producing an inaccurate value skewed substantially in favor of benefits over costs.<sup>3</sup> The Commission should reject the IPA’s unsupported position, affirm the approach taken by the ALJPO and reject the IPA’s proposed language on this issue.<sup>4</sup>

## **2. Reply to AG**

The AG’s exception on this issue substantively tracks the IPA’s position, but without the misstatements and the regrettable tone. For the reasons set forth above, the Commission should reject the AG’s position and proposed language on this issue as well.

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

#### **1. Reply to IPA**

Ameren Illinois explained in its Brief on Exceptions why the ALJPO’s decision to adopt the IPA position and cut Ameren Illinois’ administrative adder to 11.5% without any justification for removing costs associated with the planning, assessment and tracking of programs was a mistake. (AIC BOE at 6-10.) Ameren Illinois pointed out the same issues with the IPA’s approach in its Reply. (AIC Reply at 8-11.) Inexplicably, however, the IPA continues to maintain that its arbitrary removal of those costs from the Ameren Illinois administrative adder

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<sup>3</sup> The IPA’s argument that ComEd may already produce TRC value for duplicative programs (IPA BOE at 5) does not mean it is sound policy for the Commission to endorse.

<sup>4</sup> AIC notes one typographical error in the IPA’s suggested replacement language, in that it treats the sentence “For future plans, the Commission directs the utilities to conduct a TRC analysis of bids that it believes are duplicative as part of its submittal of programs to the IPA” as if it appeared in the ALJPO, which it did not. AIC believes that sentence should have been underlined to convey the IPA was suggesting including it. (IPA BOE at 6.)

was correct, even *after* Ameren Illinois has explained that it appears to be based on a misread of Ameren Illinois' submittal. (IPA BOE at 10.) What is more, as Ameren Illinois has repeatedly stated in this proceeding, the estimated administrative adder it used in its submittal lines up, approximately, with its ongoing tracking of actual administrative costs to date. (AIC Objections at 10; AIC Reply at 9.) The IPA therefore maintains that Ameren Illinois overstated its administrative adder *despite* Ameren Illinois' showing that the IPA: (1) misread Ameren Illinois' submittal; and (2) slashed costs that are supported by the evidence, should be included in the TRC calculation, and have nothing to do with the "fixed/incremental cost" dispute on which the IPA has been so focused.<sup>5</sup>

The IPA's position is unjustifiable and should be rejected. But Ameren Illinois has already explained that at length. (AIC Reply at 8-11.) At this stage, Ameren Illinois writes only to correct yet another misstatement from the IPA, which contributes to the generally unconstructive tenor of its brief. The IPA accuses Ameren Illinois of "manufactur[ing]" an argument "to cast aspersions" on the IPA's "well-justified administrative cost adjustment." (IPA BOE at 10.) Such hyperbolic characterization of the record is flat wrong. The IPA appears to believe the ALJPO described it as taking the position that Ameren Illinois and Commonwealth Edison ("ComEd") should have similar or identical administrative adders because of something *Ameren Illinois* stated. The record shows that is not the case. The ALJPO based its understanding of the IPA's position on *the IPA's own language*:

[T]he IPA believes that including fixed, non-incremental, non-program-specific costs in the TRC calculation such as those for Ameren's potential study (the development of which is a standalone requirement under Section 16-

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<sup>5</sup> For example, costs for the planning, assessment and tracking of programs are incremental costs, not fixed costs, pursuant to any reasonable definition of the categories. The IPA removed them from AIC's estimated administrative adder anyway, and has provided no justification beyond its arguments against "fixed costs," which as explained previously provide no justification at all.

111.5B(a)(3)(A), and must occur whether Ameren Illinois administers 10, 30, or zero energy efficiency programs) is inappropriate and inconsistent with the direction taken by the Commission in Docket No. 14-0588. If costs associated with Ameren Illinois' potential study are removed, the administrative cost adder would then constitute 11.5% (*by coincidence, the same amount reported by ComEd in its submittals*). Section lists the TRC results as submitted by Ameren Illinois, and the TRC as adjusted by the IPA to reflect an 11.5% administrative adder.

(IPA Plan at 95-96 (emphasis added); see also ALJPO at 88 (“If costs from Ameren’s potential study are removed, the administrative cost adder would then constitute 11.5%, which is, *according to the IPA*, the same amount reported by ComEd in its submittals.”).)

To be clear, this is far from a “well-justified administrative cost adjustment.” (IPA BOE at 10.) As Ameren Illinois previously explained, removing the cost of the potential study *does not* reduce the adder to 11.5%, and the IPA provided no justification whatsoever for *also* cutting costs associated with the planning, assessment and tracking of programs. The only “justification” presented anywhere in the IPA’s paragraph-long support of its maneuver is the side comment that the cut would render the Ameren Illinois and ComEd adders identical, “by coincidence.” Based on the record, however, there is nothing “coincidental” about the reduction of the Ameren Illinois administrative adder to 11.5% when *the IPA has intentionally set it there*. The IPA, thus, is unfair to act as though the reduction of Ameren Illinois’ administrative adder to 11.5% was somehow accidental; the IPA *made* it the same as ComEd’s, and has not justified why it did so in the Plan or in the IPA’s filed comments.

Accordingly, Ameren Illinois had to address the IPA’s position, and it did so in its filed comments. (*See, e.g., AIC Objections at 11.*) Both Staff and the ALJPO agreed with Ameren Illinois that the ComEd and Ameren Illinois administrative adders need not be the same. (ALJPO at 88, 91; Staff Response at 13.) Nothing about Ameren Illinois’ discussion of this issue qualifies as “casting aspersions,” and, again, the IPA’s aggressive litigation tactics are not

constructive to the procurement process. The Commission should disregard the IPA's proposed modifications to Page 91 of the ALJPO, and should likewise disregard the IPA's criticisms of Ameren Illinois.

## **2. ComEd**

Ameren Illinois concurs with ComEd's position and support with respect to its requested clarifications to Page 91 of the ALJPO.

### **E. Section 7.1.5.3: Whether to Exclude Two of Ameren Illinois' EE Programs from the Plan When Ameren Illinois Asserts that the Cost of these Programs Exceeds the Cost of Electric Supply.**

#### **1. Reply to IPA**

The IPA continues its aggressive opposition to the Commission's discretion and authority to limit the procurement of energy efficiency under Section 5/16-111.5B. (IPA BOE at 11-20.) It remains unclear why the IPA has undertaken such an attack on the ALJPO and the Commission's authority over regulating the procurement of energy efficiency—authority that plainly arises from the Act itself. As follows, however, each of the points set forth in the IPA's BOE are wrong, and each should be rejected.

*First*, the IPA has repeatedly and incorrectly asserted that Ameren Illinois has proposed a “new requirement,” an “unvetted new test” 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.” (IPA BOE at 11.) The IPA also takes issue with the ALJPO's conclusion that the two programs at issue “are more expensive than the supply of electricity,” because “no scrutiny” has been applied to the “entirely new test” proposed by Ameren Illinois. (IPA BOE at 12.) Without comprehensive scrutiny, says the IPA, “it is simply impossible to know whether Ameren[ Illinois'] test indeed represents the cost of supply.” (IPA BOE at 13.) Ameren Illinois takes issue with each component of this IPA argument.

Once again, the IPA's mischaracterization of what Ameren Illinois has requested in this docket does not square with the facts. As acknowledged by the IPA, Ameren Illinois' July 15 Submittal provided an "[a]nalysis of how the cost of procuring additional cost-effective energy efficiency measures compares over the life of the measures to the prevailing cost of comparable supply," as required by the Act. 220 ILCS 5/16-111.5B(a)(3)(E). This requirement of the Act was not created by Ameren Illinois any more than any other of the required components of the assessment called for under Section 5/16-111.5B was created by Ameren Illinois. It was created by the General Assembly.

Moreover, Ameren Illinois has never taken the position that the Commission must adopt a test under which it has no discretion to approve or not approve programs. Rather, Ameren Illinois consistently proposed that the Commission has the discretion to exclude programs under certain circumstances (including those circumstances present in this docket). And, in direct contradiction to the IPA's continued misstatement in its BOE, this is not a new read of the Act. Staff advocated a nearly identical position in its Objections to the 2012 IPA Procurement Plan *nearly three years ago*. See ICC Docket No. 12-0544, Staff Objections at 42-43 ("The requirement under the law is that the programs or measures included in the Plan must be cost-effective (220 ILCS 5/16-111.5B(a)(4)), *not that all cost-effective programs or measures must be included in procurement plans*").<sup>6</sup> While the Commission declined to decide the extent of its

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<sup>6</sup> Notably, Staff also advocated in ICC Docket No. 12-0544 that "The reference in Section 16-111.5B(a)(5) of the PUA to "all achievable cost-effective savings, to the extent practicable" requires the Plan to provide electric service at the "lowest total cost over time." In addition, Section 16-111.5B(a)(3) sets forth a number of other metrics that the utilities must include with their assessments submitted to the IPA. (220 ILCS 5/16-111.5B(a)(3)(D)-(E).) In particular, Section 16-111.5B states: (D) 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. (E) Analysis of how the cost of procuring additional cost-effective energy efficiency measures compares over the life of the measures to the prevailing cost of comparable supply. (*Id.*) While all the programs or measures included in the Plan must be cost-effective using the Illinois total resource cost ("TRC") test, the fact that the statute sets forth a number of *additional requirements* to include with the utilities' assessments, means that information other than just the

discretion in that docket, *see* Docket No. 12-0544 Final Order (Dec. 19, 2012) at 271, the fact that the reading of the Act proposed by Staff and Ameren Illinois has been around since the very first IPA Plan approval proceeding dealing with the procurement of energy efficiency suggests that the IPA’s continued insistence that Ameren Illinois has proposed something new, groundbreaking, or calamitous is simply flat wrong.

Additionally, to suggest that more “scrutiny” is required to determine whether Ameren Illinois has actually provided a comparison between the cost of procuring the two energy efficiency programs at issue to the cost of supply is a misguided distraction. As acknowledged by the IPA, Ameren Illinois provided its comparison in its July 2015 Submittal and provided further explanation to the IPA, upon request, regarding the comparison between the costs to procure the two programs and the cost to procure power via traditional supply. (IPA BOE at 13, n.3). Having a full understanding of how Ameren Illinois analyzed the comparison, the IPA is thus left to attack what Ameren Illinois did not do—IPA argues that the cost of “supply” is a bad metric for two reasons, both of which are wrong.

The IPA first argues that Ameren Illinois has “assume[d] a uniform cost for all customers based on the cost to eligible retail customers,” while the cost of supply may actually be higher for customers who take supply from Alternative Retail Electric Suppliers (ARES). (IPA BOE at 13, n.3.) But that criticism misses the point. Under the Act, “supply,” as used in Section 5/16-111.5B, must contemplate a comparison to comparable supply that is procured by the IPA, not ARES. *See, e.g.*, Section 5/16-111.5B(a)(3)(G) (instructing utilities to include in their

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(continued...)

results from the TRC test may be considered by the IPA and the Commission when determining which programs or measures should be included in the procurement plan.” ICC Docket No. 12-0544, Staff Objections at 42-43. These arguments mirror Staff’s position in this docket.

submittals, “[f]or each expanded or new program, the estimated amount that the program may reduce the *agency’s* need to procure supply.” (emphasis added)). And the IPA only procures supply for “eligible retail customers.” *See* 220 ILCS 5/16-111.5. When Subsection 5/16-111.5B(a)(3)(E) instructs the utilities to include a comparison of the cost of a measure or program to the “cost of supply,” the plain meaning must therefore be that the utility is to compare the program to the cost of supply for eligible retail customers.

The IPA’s second argument against the use of “supply” as a comparison point can be boiled down to the notion that a comparison to the cost of supply is inappropriate because it does not account for all of the costs and benefits of energy efficiency. (IPA BOE at 13-14.) In other words, the IPA argues that the analysis called for under Section 5/16-111.5B(a)(3) should be the same thing as the TRC test. But the comparison called for in the Act must be an additional consideration—and not the same thing as simply running the TRC test. As Ameren Illinois explained in its Objections (AIC Objections at 15-16), the language of Section 5/16-111.5B makes clear that a showing of cost-effectiveness and an “[a]nalysis of how the cost compares over the life of the measures to the prevailing cost of comparable supply” are two different components called for by the Act that do not call for the same analysis. *See People v. Gutman*, 959 N.E.2d 621, 632 (Ill. 2011) (instructing the courts to “construe statutes so as not to render any term superfluous”).

Also, as explained by Staff, being “cost-effective” is a threshold, but it is not the only consideration. (Staff Reply at 7-8.) While only cost-effective programs should be considered for inclusion in the Plan, the consideration does not end there, as there are other components to consider pursuant to the Act. 220 ILCS 5/16-111.5B(a)(3)(A-E). The IPA may not think that a

comparison to the cost of supply is a valuable measure, but it is one the General Assembly wrote into the Act, and, respectfully, the IPA's opinion does not trump the Illinois Code.

In summary, Ameren Illinois has not proposed a self-created, new, unvetted test. Rather, both AIC and Staff have proposed that a plain reading of the Act itself calls for considerations other than cost-effectiveness, and that the Commission has the discretion to limit the procurement of cost-effective energy efficiency, including limiting the procurement of programs whose costs exceed the cost of comparable supply. As Ameren Illinois pointed out in its July 15 Submittal and in its comments, due to the recent impact of energy efficiency costs on customers' bills, the Commission should exercise its discretion and exclude the two programs at issue because they cost more than simply procuring the power supply through a traditional procurement. (AIC Objections at 18; AIC Reply at 14.)). Accordingly, the Commission should set the IPA's rhetoric aside and affirm ALJPO in this regard.

*Second*, the IPA persists throughout its BOE to unfairly attack not only Ameren Illinois, but the ALJs as well, describing the wording, analysis and findings set forth in the ALJPO as "highly irresponsible" (IPA BOE at 13), "unwise and unsustainable" (*Id.* at 18), reflecting "several logical flaws and mischaracterizations of the record and governing law" (*Id.* at 12), "conclusory" (*Id.* at 12), "plainly inconsistent with [the] statutory scheme," (*Id.* at 15), "legally unsustainable" (*Id.* at 17), and leaning "on thin rationale" (*Id.*), and further claiming that the "Proposed Order's total mischaracterization of the record simply cannot constitute a permissible justification for an administrative decision." (*Id.* at 17). The IPA is wrong in both its tone and characterization. While the ALJPO's statement of the issue could be clarified so as to more succinctly state that the issue at hand is whether the Commission has the authority under the Act to exclude cost-effective programs under certain circumstances, including when the cost to

procure the programs exceeds the cost of comparable supply, the ultimate conclusion that the Commission has such authority and discretion is correct, and it should stand.

Beneath the diatribe against the ALJPO is a simple disagreement with it. The IPA takes issue with the ALJPO for considering a comparison to supply that is called for by the plain language of the Act, a comparison that is different than the TRC test. (IPA BOE at 15.) Yet, while criticizing the ALJPO for “ignoring” the statutory scheme, it is the IPA that continues to ignore that the Act makes the TRC test and the comparison to the cost of supply *different things*. Accordingly, the Commission can and should consider them both when exercising its authority and discretion to approve or not approve cost-effective programs in the Plan.

Indeed, in its next argument the IPA appears to concede that the Commission has the authority to reject cost-effective programs:

The IPA does agree that Section 16-111.5B grants the Commission discretion to reject programs—but only to the extent that such programs would fail to “fully capture the potential for all achievable cost-effective savings, to the extent practicable.” (220 ILCS 5/16-111.5(a)(5)) (emphasis added).

(IPA BOE at 15.) But the IPA then attempts to limit the Commission’s discretion based on the statute’s use of the term “practicable,” rather than “practical,” to describe the Commission’s authority to limit energy efficiency procurement. Again, this is a distinction without a difference. When the IPA “painstakingly detailed the differences between ‘practicable’ and ‘practical’ in its Reply” (IPA BOE at 16), it, by design or by accident, did not include portions of the dictionary definition it was quoting. As Ameren Illinois explained in its Reply:

In full, Merriam-Webster defines “practicable” to mean “capable of being put into practice or of being done or accomplished: feasible.”<sup>7</sup> “Feasible,” in turn, means

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<sup>7</sup> <http://www.merriam-webster.com/dictionary/practicable>

something different than the IPA intends. “Feasible,” as defined by Oxford, means “[p]ossible to do easily or conveniently.”<sup>8</sup>

(AIC Reply at 14.) So, even pursuant to the IPA’s (flawed) logic and argument, and even using the same dictionary on which the IPA relies, “the Commission shall ... approve the energy efficiency programs and measures included in the procurement plan ... if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent [it is possible to do so easily or conveniently].” 220 ILCS 5/16-111.5B(a)(5). Even following the IPA’s argument, such a reading of the statute does not prohibit the Commission in any way from taking into consideration realities like the significant bill impact of energy efficiency in the state, or a comparison of the cost of programs or measures to the cost of comparable supply. Once the IPA’s selectively quoting (or misquoting) of the dictionary is exposed, its plain language argument falls apart.

An additional argument put forth by the IPA focuses on whether the programs at issue are cost-effective and whether the ALJPO’s reference to the Illinois Stakeholder Advisory Group (“SAG”) renders the conclusions unsustainable. Both of these issues are red herrings. The Commission has the authority to consider whether the cost to procure the two energy efficiency programs at issue exceeds the cost of comparable supply, and to exclude those programs if it agrees (as set forth in the ALJPO) that they do. This is not an issue of cost-effectiveness, no matter how many times the IPA says it is. Nor is this an issue of whether the SAG has or has not reviewed or approved the Act’s provisions and “vetted” the Commission’s consideration of the analyses called for by the Act, as suggested by the IPA. (IPA BOE at 17.)

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<sup>8</sup> [http://www.oxforddictionaries.com/us/definition/american\\_english/feasible](http://www.oxforddictionaries.com/us/definition/american_english/feasible)

The IPA's final argument (IPA BOE at 18-19) merely highlights a disagreement with the ALJPO's consideration of the bill impact felt by customers on account of significant growth in energy efficiency in Illinois. But that, too, is not a basis to modify the ALJPO's correct conclusions. While the IPA prefers to cast aside the significant bill impact as irrelevant—going so far as to suggest that the two excluded programs are not really that big or expensive—the IPA should not be so quick to do so in light of its own statutory obligation to “develop electricity procurement plans to ensure adequate, reliable, *affordable*, efficient, and environmentally sustainable electric service *at the lowest total cost over time.*” 20 ILCS 3855/1-5(A). Perhaps more importantly, the IPA's current preference on the relevance of customer bill impact has no bearing on whether the Commission should consider whether the cost to procure an energy efficiency program will cost more than the cost to procure traditional supply, and how that cost will impact customers, when exercising its discretion under Section 5/16-111.5B(a)(5).

Ultimately, Ameren Illinois' proposal, supported by Staff, was simple. The Commission undeniably has the authority to limit the procurement of energy efficiency in a given year, as evidenced by its regular exclusion of duplicative and competing programs that might otherwise be cost-effective. As established by Ameren Illinois, the significant bill impact on its customers due to the growth of energy efficiency in the State was a good reason to exercise the Commission's limiting authority, particularly in light of the fact that two programs at issue for approval would cost more to procure than comparable supply. Ameren Illinois therefore requested (and Staff agreed) that the Commission should exercise its statutorily provided discretion and exclude the programs, which the ALJPO does. Ameren Illinois respectfully submits that the ALJPO charts the right course and should not be reversed.

## 2. Reply to AG

In apparent support of the IPA's position (without supporting the aggressive tenor), the AG notes that "programs that are cost-effective ... shall be included in the IPA's annual plan." (AG BOE at 4.) But, again, whether or not programs should be included in the *IPA's Plan* has no bearing on whether *the Commission* should approve and require implementation of those programs. To the extent the AG believes the Commission is required to approve *all* cost-effective programs proposed by the IPA, it is wrong. Staff capably explained why earlier in this docket:

[Section 5/16-111.5B(a)(5)] does not require all cost-effective energy efficiency programs and measures to be included in a procurement plan. That section only states that for those energy efficiency programs and measures included in the procurement plan they shall 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."

(Staff Reply at 8 (emphasis added).)<sup>9</sup>

Put another way, cost-effectiveness is a necessary condition, but not the sole condition, for inclusion in a plan. (*Id.*) The AG contorts the Act to avoid this conclusion by suggesting the phrase "to the extent practicable" applies to the goal of capturing "all achievable cost-effective savings," rather than to specific energy efficiency programs. (AG BOE at 6.) The value of this distinction is unclear to Ameren Illinois, as either interpretation would afford the Commission the authority and discretion it clearly does possess. The AG also attempts to make a distinction between "programs" and "measures", but this, too, is beside the point. Programs (like the ones at issue here) are comprised of measures—so Ameren Illinois did not compare a "single measure" to the cost of comparable supply, but rather whole programs. And, finally, while the AG

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<sup>9</sup> Again, this docket is not the first time Staff has taken this position. See Docket No. 12-0544.

incorrectly states that “the record does not reveal how Ameren calculated the cost of supply,” that too is not accurate. The straightforward analysis was provided by Ameren Illinois in its July 15 Submittal, which was attached the Plan at the time of filing. (See IPA Plan Appendix B (Section 5/16-111.5B submittal)—2016 IPA Procurement Plan at 14-15, 17.)

The remainder of the AG’s argument replicates many of the incorrect positions taken by the IPA, which for the reasons set forth in the preceding section should be rejected.

### **3. Reply to ELPC**

ELPC’s argument shares the same infirmities as the arguments presented by the IPA and the AG, not least of which is that its criticisms of the comparison to the cost of supply are simply that it does not take into account all of the costs and benefits associated with energy efficiency—i.e., that it is not the TRC test. (ELPC BOE at 5-8.) Again, for the reasons stated above, Ameren Illinois has not taken the position that the additional comparison to the prevailing cost of supply is the same thing as the TRC test, or that it is designed to replace or supplant the TRC test. It is an *additional* consideration available to the Commission pursuant to the plain language of the Act. As explained above, none of the arguments presented by the IPA, the AG, or ELPC are convincing, and the Commission should adopt the ALJPO’s conclusions on this subject.

#### **F. Section 8: 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.**

##### **1. Reply to ELPC and Renewables Suppliers**

Contrary to the arguments asserted by Renewables Suppliers and ELPC in their respective BOEs (Renewables Suppliers BOE at 6 and ELPC BOE at 1), the ALJPO correctly rejected the recommendations for a multi-year REC procurement using RRB. (ALJPO at 111.) The ALJPO correctly finds that the decisions made closer to the delivery year are more likely to align with the targets and budgets for the REC procurement. In addition, the ALJPO correctly

recognizes that there is no “budget surplus” in the RRB and there are no projected shortfalls in compliance targets moving forward. (*Id.*)

Furthermore, the ALJPO properly credited the positions of Ameren Illinois, ComEd and the IPA that customer switching is still a very real risk that could have a serious impact on the overall available funds in the RRB. (ALJPO at 111.) Given this uncertainty, securing multi-year REC contracts based on a pool of money that has yet to be collected is not warranted, as future levels of the RRB could swing significantly depending on customer switching trends. These points, along with the absence of shortfalls in future compliance targets, strongly support the ALJPO’s decision to reject the proposals put forth by the Renewables Suppliers and ELPC. In addition, while ELPC states that now is a good time to procure RECs (specifically DG RECs) given the expiration of federal tax credits, such a statement is speculative and could be countered with speculation that the recent trend of declining solar costs will continue and therefore future DG RECs would be cheaper in the future.<sup>10</sup>

As explained in Ameren Illinois’s Response, the level of existing REC hedges is already much higher than the proposed hedging level for energy. (AIC Response at 2-3.) Ameren Illinois established that the energy hedging proposal put forth in the Plan properly balances the desire to hedge on a forward looking basis with the risks of uncertain load. Moreover, the proposals for RECs by the Renewables Suppliers and ELPC are overly aggressive and would compound the risk to customers and suppliers under the Long Term Power Purchase Agreements (“LTPPAs”). Both the Renewables Suppliers and ELPC continue to fail to acknowledge that eligible retail load represents less than 20% of Ameren Illinois’ total delivery service load and

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<sup>10</sup> Ameren Illinois makes no projection regarding the price of future DG REC prices and provides this comment solely as an illustration that, contrary to ELPC’s position, the future price of DG RECs remains uncertain.

existing REC hedges are already high when compared to the level of energy hedging. (*Id.*) Additional hedging as proposed by the Renewables Suppliers and ELPC could result in more frequent and higher levels of curtailment for the LTPPAs. This could potentially harm the suppliers under the LTPPAs, but it could also increase risk to customers in a scenario where switching to alternative suppliers increases and the remaining eligible retail customers absorb the contractual liability for other REC contracts which cannot be curtailed.

For all of these reasons, the exceptions proposed by the Renewables Suppliers and ELPC should be rejected, and the Commission should affirm the ALJPO on this issue such that the Plan will not include any multi-year REC procurements using RRB.

**G. Section 8.4: Whether the IPA Should be the Contractual Counterparty with Suppliers to the Planned DG Procurement, and not the Utilities Themselves; Whether the Bids or the Resulting Contracts Should Be Require to be at Least 1 Megawatt in Size for the DG Procurement.**

**1. Reply to ComEd**

Ameren Illinois supports the language put forth by ComEd to include reference to the statutory 1 MW threshold requirement for DG RECs and that DG REC contracts include a blended price for each product size category (i.e., less than 25 kW and 25 kW to 2 MW). (ComEd BOE at 14.) AIC joins in ComEd's request that the ALJPO be modified accordingly. As correctly noted by ComEd, the Act puts forth clear language that is intended to eliminate the potential for the utilities to incur administrative burden associated with DG REC contracts. This omission should be remedied in the final order to be consistent with the Act.

**II. CONCLUSION**

For the reasons set forth above, Ameren Illinois Company respectfully requests that the Commission modify the ALJPO as set forth in the Brief on Exceptions filed by Ameren Illinois on November 20, 2015.

Dated: December 1, 2015

Respectfully submitted,

The Ameren Illinois Company

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**CERTIFICATE OF SERVICE**

I, Mark W. DeMonte, an attorney, certify that a copy of the foregoing Reply to Briefs on Exceptions was filed on the Illinois Commerce Commission's e-docket and was served electronically to all parties of record in this docket on this 1st day of December, 2015.

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