

**Docket No:** 15-0541  
**Bench Date:** 12/16/15  
**Deadline:** 12/28/15

**MEMORANDUM**

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**TO:** The Commission

**FROM:** Claudia E. Sainsot and Glennon P. Dolan,  
Administrative Law Judges

**DATE:** November 7, 2015

**SUBJECT:** Illinois Power Agency

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

**RECOMMENDATION:** Enter the attached Order which approves the IPA's 2016 Procurement Plan.

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**I. PROCEDURAL HISTORY**

On September 28, 2015, the Illinois Power Agency (the "IPA") filed a Petition seeking approval of its 2016 Procurement Plan (the "Plan") initiating the instant proceeding. Attached to the Petition was a copy of that Plan. Section 16-111.5(d)(2) of the Public Utilities Act, (the "PUA" or the "Act") 220 ILCS 5/1-101 *et seq.*, requires the IPA to prepare a power procurement plan (the "Draft Plan"), which is to be posted on the IPA and Illinois Commerce Commission (the "Commission") websites. The purpose of the power procurement plan is to secure electricity commodity and transmission services to meet the needs of eligible retail customers in the service areas of Commonwealth Edison Company ("ComEd"), Ameren Illinois Company d/b/a Ameren Illinois ("Ameren"), and MidAmerican Energy Company ("MidAmerican").

Any comments on the Draft Plan are submitted to the IPA for its review. The PUA requires the IPA to make revisions, as necessary, based on the comments submitted, and then to file a revised plan with the Commission. As such, the only Plan the IPA is required to formally file with the Commission, and the one that is actually before the Commission for its review in this proceeding, is the one containing the IPA's post-comment revisions.

Upon the annual filing of the Plan with the Commission, Section 16-111.5(d)(3) of the PUA provides that within five days thereof, any Objections to the Plan must be filed with the Commission. The same subsection also provides that the Commission shall enter an order approving or modifying the Plan within 90 days after the filing of the Plan. The Plan was filed on September 28, 2015; thus, the statutory deadline for Commission action is December 28, 2015. Pursuant to Section 16-111.5(d)(4) of the Act, the

Commission shall approve the Plan, including the forecast used in the Plan, “if the Commission determines that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.” 220 ILCS 5/16-111.5(d)(4).

Following the receipt of the IPA's Plan on September 28, 2015, the following entities were granted leave to intervene: the Environmental Law and Policy Center ("ELPC"); Wind on the Wires; the Retail Energy Supply Association ("RESA"); and the Renewables Suppliers. On October 5, 2015 Objections and Comments to the Plan were filed by Ameren, ComEd, the Renewables Suppliers, MidAmerican, ELPC, Wind on the Wires, and the Commission Staff ("Staff"). Parties were notified that pursuant to Section 16-111.5(d)(3) of the PUA, no hearing in the above-referenced matter was determined to be necessary. Pursuant to a schedule issued by the Administrative Law Judges, (the ALJs) Responses to Objections were filed on October 20, 2015 by the IPA, Staff, ComEd, Ameren, ELPC, Wind on the Wires, and the Renewables Suppliers. Thereafter, Replies to Responses were filed by the above-named parties on October 30, 2015.

An Administrative Law Judges' Proposed Order (an "ALJPO") was duly filed and served on the parties on November 13, 2015. The Illinois Attorney General (the "AG") and the above-named parties, except MidAmerican, filed Briefs on Exception on November 20, 2015. The AG, MidAmerican and the other parties listed above filed Reply Briefs on Exception on December 1, 2015.

## **II. OVERVIEW OF THE IPA PROPOSED PROCUREMENT PLAN**

According to the IPA, this is the eighth electricity and renewable resource procurement plan prepared by the IPA under the authority granted to it under the Illinois Power Authority Act, (the "IPA Act") 20 ILCS3855/1-1 *et seq.*, and as further regulated by the PUA. The IPA's Plan addresses the provision of electricity and renewable resource supply for the "eligible retail customers" of Ameren, MidAmerican and ComEd, as defined in Section 16-111.5(a) of the PUA. Section 16-111.5(a) of the PUA defines "eligible retail customers" as:

[T]hose retail customers that purchase power and energy from the electric utility under fixed-price bundled service tariffs, other than those retail customers whose service is declared or deemed competitive under Section 16-113 and those other customer groups specified in this Section, including self-generating customers, customers electing hourly pricing, or those customers who are otherwise ineligible for fixed-price bundled tariff service.

220 ILCS 5/16-111.5(a).

The Plan considers a 5-year planning horizon that begins with the 2016-2017 delivery year and lasts through the 2020-2021 delivery year. At its core, the Plan consists of: a) a forecast of how much energy (and in some cases capacity is required by eligible retail customers; b) the supply currently under contract; and c) what type of and how much supply must be procured to meet load requirements and other legal requirements (such as renewable/clean coal purchase requirements or mandates from previous Commission Orders).

Thus, the Plan must contain an hourly load analysis, which includes: multi-year historical analysis of hourly loads; switching trends and competitive retail market analysis; known or projected changes to future loads; and growth forecasts by customer class. In addition, the Plan must analyze the impact of demand side and renewable energy initiatives, including the impact of demand response programs and energy efficiency programs, both current and projected. Based on the hourly load analysis, the Plan must detail the IPA's design for meeting the expected load requirements that will not be met through preexisting contracts. See, 220 ILCS 5/16-111.5(b)(1) (i)-(iv), (b)(2) and (b)(3).

Overall, the Plan does the following: it defines the different Illinois retail customer classes for which supply is being purchased, including monthly forecasted system supply requirements, and including expected minimum, maximum, and average values for the planning period. It also includes a proposed mix and selection of standard wholesale products, for which, contracts will be executed during the next year that separately, or in combination, will meet the portion of the load requirements that were not met through pre-existing contracts. Such standard wholesale products include, but are not limited to, monthly 5 x 16 peak period block energy, monthly off-peak wrap energy, monthly 7 x 24 energy, annual 5 x 16 energy, annual off-peak wrap energy, annual 7 x 24 energy, monthly capacity, annual capacity, peak load capacity obligations, capacity purchase plan, and ancillary services. It further details the proposed term structures for each wholesale product type that is included in the portfolio of products.

Other features of the Plan include an assessment of the price risk, load uncertainty, and other factors associated with the proposed portfolio measures, including, to the extent possible, the following factors: contract terms; time frames for security products or services; fuel costs; weather patterns; transmission costs; market conditions; and the governmental regulatory environment. For those portfolio measures that have significant price risk, the Plan will identify alternatives to those measures. For load requirements included in the Plan, the Plan includes the proposed procedures for balancing loads, including the process for hourly load balancing of supply and demand and the criteria for portfolio re-balancing in the event of significant shifts in load. Finally, it includes renewable resource and demand-response products.

### **III. ISSUES**

#### **A. Section 7.1.4: Whether to Require the Stakeholder Advisory Group to Address How Section 16-111.5B Programs Can be Used to Expand Section 8-103 Energy Efficiency Programs that have not yet Been Approved by the Commission. (Page 83)**

##### **1. Analysis**

In the Plan here, the IPA stated that for the (next) 2017 Procurement Plan to be developed during the summer of 2016, the utilities will be filing their next set of Section 8-103 energy efficiency three-year plans for the Fall of 2016. (See, 220 ILCS 5/8-103). Therefore, there will not be a set of existing and approved Section 8-103 programs, against which, the Section 16-111.5B programs here would be considered.

The parties agreed that this issue should be addressed in Stakeholder Advisory Group (“SAG”) workshops. However, the parties disagreed as to how to go about doing SAG workshops on this issue. The parties have some ideas about how to address this issue, such as, inclusion of energy efficiency programs, conditioned on approval at a later time, and three year contracts with energy efficiency providers.

## **2. Recommendation**

The attached Order requires the parties to address this issue thoroughly and comprehensively at SAG workshops. In this way, the providers and other entities, as well as the utilities, will have the opportunity to discuss this issue and provide meaningful solutions after they have been vetted and thoroughly explored.

### **B. Section 7.1.5.3: Whether to Exclude Two of Ameren’s Energy Efficiency Programs from the Plan When Ameren Asserts that the Cost of these Programs Exceeds the Cost of Electric Supply. (Page 96)**

#### **1. Analysis**

Ameren sought to exclude two of its energy efficiency programs because the cost of those programs exceeds the cost of electric supply. Those programs are an electric-only behavior modification program and an agricultural energy efficiency program. Ameren is of the opinion that there are practical limits on energy efficiency procurement. It argued that 220 ILCS 16-111.5(a)(3)(E) provides that an electric utility shall include in its assessment: “Analysis of how the cost of procuring cost-effective energy efficiency measures compares over the life of the measures to the prevailing cost of supply.”

Ameren pointed out that energy efficiency’s impact on its customers, which here are only residential customers and small businesses, is significant. Before 2013, the average annual energy efficiency charges were approximately \$20 for residential customers and \$61 for small businesses. However, for the 2016 Plan year, the annual cost for energy efficiency (including section 8-103 energy efficiency) for residential customers is in excess of \$55 and it is \$175 for small businesses. Ameren contended that at a certain point, all parties must ask themselves when a given year’s energy efficiency procurement has grown large and expensive enough.

Commission Staff concurred with Ameren. Staff reasoned that information other than the results from the Total Resource Cost (“TRC”) test should be used when determining whether energy efficiency programs should be used in a procurement Plan. Staff also pointed out that the two energy efficiency programs at issue barely passed the TRC test and they have the lowest TRC ratios out of all of the programs for Ameren. Staff further contended that the Commission should be mindful of the analysis provided by Ameren concerning the significant burden imposed upon small business and residential ratepayers with the approval of each additional energy efficiency program.

The IPA vigorously disagreed with Ameren as well as Staff, contending that Ameren is devising a new, unproven test regarding energy efficiency programs. It also averred that Ameren's "cost of supply" test does not include transmission and distribution costs. It additionally maintained that it does not matter that these two programs are expensive to ratepayers because, in the IPA's opinion, the benefits of these programs exceed their costs. The ELPC and the AG were in agreement with the IPA's conclusion, as well as its reasoning.

## **2. Recommendation**

The Order before you concludes that these two energy efficiency programs should be excluded from the Plan. It reasons that the phrase "to the extent practicable" in 220 ILCS 5/16-111.5B(a)(5) gives this Commission the authority to set practical limits on the procurement of energy efficiency. Additionally, as Staff has pointed out, rejection of these two programs should send a signal that in the future, energy efficient programs should be competitively priced.

### **C. Section 8.1: Whether the RRB Should be used for SREC When the Total REC Target has been Exceeded for the Present Year with Existing Contracts. (Page 120)**

#### **1. Analysis**

For the upcoming 2016-2017 delivery year, existing resources under contract for Ameren and ComEd are not sufficient to meet solar photovoltaics ("PV") and distributed generation ("DG") sub-targets, and MidAmerican is short for overall renewable energy resource compliance, wind, solar PV, and DG (due to not having previously participated in the IPA procurement process). ComEd is short Renewable Energy Credits ("RECs") for overall renewable energy resource compliance, but procuring its required solar PV volume would be sufficient to fill that gap. To achieve statutory compliance, the IPA recommends a spring 2016 procurement of RECs to meet each utility's requirements for the 2016-2017 delivery year.

Ameren questions the need to satisfy REC sub-targets in a year where the total REC target has been exceeded. According to Ameren, the IPA's interpretation of Section 1-75(c)(1) would add costs to eligible retail customers. Ameren points to the 2013/2014 IPA Plan where the Commission determined that it was not necessary to purchase additional renewable resources. According to Ameren this would increase the supply costs by approximately \$5 per year for a typical residential customer taking fixed price supply from Ameren.

ComEd agrees with Ameren that this will result in customers paying more for RECs than the amount targeted by Section 1-75 (c) of the IPA Act.

#### **2. Recommendation**

The attached Order supported the position of the IPA in finding that the plain language of Section 1-75(c)(1) requires technology-specific targets by dates certain. The

IPA has an obligation to meet technology-specific targets as described in this Section. The language does not carve out an exception if the overall target of RECs is met. Therefore, the positions of Ameren and ComEd were rejected under this section of the Order.

**D. Section 8.1.3: Whether MidAmerican’s Renewable Energy Resources Should be Calculated for all of its Eligible Retail Load or only for the Portion of its Load for which it has Requested Procurement from the IPA. (Page 124)**

**1. Analysis**

Plan year 2016 is the first time that MidAmerican has asked the IPA to procure energy for it. Recent amendments to the IPA Act and the PUA allow a small multi-jurisdictional electric provider to seek procurement for all of or for only a portion of its eligible retail load. See, e.g., 220 ILCS 5/16-111.5(a). MidAmerican requested IPA procurement of a relatively small portion of its Illinois load, approximately 14%.

Section 1-75(c)(1) of the IPA Act refers to procurement percentages applicable to “each utility’s total supply to serve the load of eligible retail customers, as defined in Section 16-111.5(a) of the Public Utilities Act.” 20 ILCS 3855/1-75(c)(1). While Section 16-111.5(a) of the PUA defines “eligible retail customer” by customer status that would appear to include MidAmerican’s entire retail eligible customer load, this statute also contemplates that MidAmerican may seek procurement for only a portion of its load. 220 ILCS 5/16-111.5(a).

MidAmerican maintained that the amount of renewable energy resources that it should procure should be based upon the percentage of Illinois load that it procures from the IPA, about 14%, rather than upon 100% of its Illinois load. It reasoned that Section 16-111.5 of the PUA must be read in its entirety and therefore, any renewable resource target must be based upon the portion of the Illinois jurisdictional load being procured by the IPA.

The IPA and Staff disagreed with MidAmerican, arguing that if the legislature had intended for the IPA procurement plans regarding small multi-jurisdictional utilities to include renewables based only upon the portion of the (Illinois) utility’s load that the IPA procures, then it would have made an explicit provision with language to that effect.

**2. Recommendation**

The attached Order concludes that the IPA and Staff ignore the fact that the phrase “total supply” in 20 ILCS 3855/1-75(c)(1) means the totality of the supply furnished by the IPA. It also agrees with MidAmerican’s conclusion that, when construing Section 16-111.5 of the PUA, a person must look to the totality of this statute, which clearly contemplates allowing a small, multi-jurisdictional utility like MidAmerican to procure part of its load. Further, this Order notes that there is no policy reason to impose a standard that is more

onerous on MidAmerican (and therefore upon its customers) than what is imposed upon Ameren and ComEd.

**E. Section 8.4: Whether the IPA should be the Contractual Counterparty with Suppliers to the Planned DG Procurement, and not the Utilities Themselves; Whether the Bids or the Resulting Contracts should be Required to be at Least 1 Megawatt in Size for the DG Procurement. (Page 134)**

**1. Analysis**

The IPA is proposing the 2015 model as the starting point for a 2016 procurement of DG RECs. Unlike with the IPA's supplemental photovoltaic ("SPV") procurement under Section 1-56(i) of the IPA Act, nothing in the law governing this DG procurement distinguishes between "new" or "existing" systems. As a result, the IPA's sole requirement regarding the system completion date is that all participating DG systems must successfully begin delivery of RECs generated in the 2016-2017 delivery year. Contracts will be for the five delivery years starting with 2016-2017 delivery year.

Ameren suggests that the IPA become the contractual counterparty with suppliers to the planned DG procurement, and not the utilities themselves. Ameren claims that the proposed DG REC procurement associated with the IPA Plan would benefit all interested parties by stipulating that the IPA is the contractual counterparty with suppliers and not Ameren. Doing so would streamline the procurement process and the administration of resulting contracts. To compensate the IPA for DG REC expenses under its contracts, Ameren and the IPA would enter into a supplemental agreement whereby Ameren would use prior collections from real time pricing customers to reimburse the IPA for contractual expenditures. ComEd agrees with Ameren's recommendation that doing so would streamline the procurement process and the administration of resulting contracts.

ComEd proposed revisions to the 2016 Plan to clarify that the contracts utilities execute with aggregators must be at least one megawatt in size, but the overall contract can include both renewable energy credit product sizes specified in Section 1-75(c) (*i.e.*, less than 25 kW and 25 kW to 2 megawatts). ComEd's proposed change would also permit one contract with the aggregators to be below 1 megawatt to accommodate any balancing the IPA may need to undertake between the utilities. ComEd also proposed a single blended price *per REC product size rather than per contract* (*i.e.*, less than 25 kW and 25 kW to 2 MW), that will ensure both parties to the contract will be treated fairly.

Both the IPA and ELPC disagree with Ameren's and ComEd's Position on the IPA being the contractual party and the size of the one megawatt proposals. The IPA argues that it cannot be the contracting party under Section 1-75 (c) of the IPA Act. Both the IPA and ELPC argue that the minimum threshold of 1 MW applies to the bids and not the contracts. The IPA does not object to the proposal of ComEd concerning the blended price.

**2. Recommendation**

The attached Order rejected the proposal of Ameren that the IPA be the contracting party for the planned DG procurement. The Order also rejected ComEd's

proposal that the contracts and not the bids must meet the 1 MW threshold. The Order did adopt the agreed upon language of ComEd concerning the single blended price based on the REC product size.

#### **IV. CONCLUSION**

We recommend that the Commission enter the attached Order approving the IPA's 2016 Procurement Plan.

CES/GPD;jt