STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Power Agency	)	
	)	
	)	Docket No. 16-0453
Petition for Approval of Procurement Plan	)	

AMEREN ILLINOIS COMPANY'S BRIEF 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 Judge ("ALJ"), its Brief on Exceptions ("BOE") to the ALJ's Proposed Order ("ALJPO") issued in this proceeding on November 14, 2016. Ameren Illinois appreciates the thoughtful treatment of the issues set forth in the ALJPO and submits the following two exceptions to the ALJPO.[1] The exceptions, along with proposed modifications to the language of the ALJPO, are organized consistent with the headings and structure of the ALJPO's discussion of the 2017 Illinois Power Agency ("IPA") Procurement Plan ("Plan").

I. EXCEPTIONS

A. Exception #1: Section 9.5.4.3—Behavioral Program

The ALJPO correctly rejected the entire bid for a behavioral program to be implemented in the Ameren Illinois service territory and Ameren Illinois agrees with this conclusion. As concluded by the ALJPO, the bid should be rejected *in toto* "because it is not clear that it will 'fully capture the potential for all achievable cost-effective savings, to the extent practicable.'" (ALJPO at 88 (citing 220 ILCS 5/16-111.4B(a)(5)). However, the ALJPO goes on to state that "Staff offers the option that just the expansion portion of this bid be approved, although it is not

[1] Ameren Illinois' silence on an issue should not be construed as endorsement or disagreement with the ALJPO's treatment of that issue.

clear whether the bidder would consider separating the continuation and expansion programs. If it is a possibility, the Commission agrees with Staff that the expansion program should be included in the 2017 Plan because it clearly passes the TRC test." (*Id.*) This finding, however, should not be included in the Final Order because it is not consistent with the bid itself or IPA's analysis of it and, equally important, contradicts the (correct) finding that programs should be evaluated "as bid" and the utilities should not renegotiate bids after the fact (a position also advocated by the IPA). Accordingly, Ameren Illinois respectfully requests that the language be removed from the Final Order and the replacement language set forth below be adopted.

First, as explained by the IPA, in both the Plan and in the IPA's subsequent filings, the proposed behavior modification program, "as bid," cannot and should not be separated out into two separately-analyzed programs. (ALJPO at 86-87.) While parties may have referred to the varying components of the program as different "programs," they are really just that—two components of one bid. As explained by the IPA the "bidder created self-inflicted confusion through assembling its bid in this oddly segmented manner, [but] **<u>the language of the bid makes sufficiently clear that the 'expansions' are not proposed as standalone programs</u>**, and should be analyzed in conjunction with the 'continuation'." (ALJPO at 87.) Moreover, as the IPA explained in its Plan, "the bid specifically described the expansion options as bundled with the core program, and thus the IPA believes they must be evaluated as bundled together." (IPA Plan at 118.) Indeed, as explained in a footnote to that explanation, the IPA noted that the bidder itself "stated in its bid that the expansion options '**<u>all assume that this existing program continues concurrently</u>**.'" (*Id.* at 118, fn. 259.) Accordingly, the record overwhelmingly establishes that the program—as viewed by both the IPA and bidder—cannot and should not be separated for purposes of review and approval. There simply is no lack of clarity on this point and the Final Order should account for that.

Second, while Staff originally offered an alternative to rejection of the bid in the form of a partial approval of an unbundled bid, that proposal was made early in the process, prior to the Stipulation being entered into in ICC Docket No. 16-0413 and without the benefit of the resolution of policy issues that cut against the alternative. (*See* Staff Objections (10/3/16) at 18.) Indeed, since Staff's filing, both AIC and the AG provided several reasons why the entire bid should be rejected. (ALJPO at 83-86 (summarizing the parties' positions).)

Moreover, Staff's early alternative was necessarily contingent on the requirement that AIC "renegotiate with the vendor for inclusion of an Expansion Program that is cost-effective and provides net benefits," (*id.*), a premise that has since been properly rejected by the ALJPO. (ALJPO at 59-60.) As noted in the ALJPO and explained by the IPA, "post-Plan approval negotiations (also floated by the AG in Comments) could yield even less benefit [than post-bid negotiations], as the bidder would have the backstop of a Commission Order already approving its cost-effective bid." (ALJPO at 57 (citing IPA Resp. at 13).) And by requiring Ameren Illinois to go back and renegotiate with the behavioral modification program bidder, it would "force[] the utility to assume a portfolio development role not envisioned in the law." (ALJPO at 58.) These positions, among others, were credited by the ALJ when rejecting a proposal to have utilities conduct post-Plan approval negotiations—and there's no reason that an exception should now be made for the behavioral modification program.

In light of the above, the ALJPO's alternative finding should be stricken from the Final Order, and Ameren Illinois should not be required to go back to the bidder and renegotiate an entirely new program based on one component of the bid. Accordingly, Ameren Illinois respectfully requests that the language shown on pages 88-89 as follows:

7. Commission Analysis and Conclusion

> The Commission declines to approve the inclusion of this behavioral program as bid in the 2017 Plan. The Commission finds that this program should be excluded from the 2017 Plan so that the independent evaluator can assess the persistence of the program savings over a single year when the program is not being provided. Moreover, the Commission notes that Staff states that excluding the continuation program from the procurement plan would not significantly affect energy savings, due to the high level of persistence associated with this behavioral program. For example, Staff explains, customers who have been in Ameren's behavioral program for many years may save 95% or more of what they can be expected to save under the continuation program, even if the continuation Program is excluded from the procurement plan. *See* Staff Cmnts. at 18 (citing IL-TRMv5.0 Vol. 4 at 16). For these reasons, the Commission does not approve this energy efficiency program because it is not clear that it will "fully capture the potential for all achievable cost-effective savings, to the extent practicable." 220 ILCS 5/16-111.4B(a)(5).
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> ~~Staff offers the option that just the expansion portion of this bid be approved, although it is not clear whether the bidder would consider separating the continuation and expansion programs. If it is a possibility, the Commission agrees with Staff that the expansion program should be included in the 2017 Plan because it clearly passes the TRC test.~~
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> Finally, the Commission will not adopt a rule against bundled bids as suggested by Staff because each program could be structured so differently that it is impossible to say that all bundled bids are improper.

B. Exception #2: Section 9.6.8 ComEd Programs Recommended for Approval

The ALJPO declines to adopt Staff's proposed rejection of the LIMEP program, which was bid into the ComEd service territory. (ALJPO at 103.) In doing so, the ALJ proposes to reject a "bright line test based on the [Utility Cost Test ("UCT")] that would essentially ignore the results of the TRC." (*Id.*) While Ameren Illinois recognizes the benefits that the LIMEP program might bring, the Company respectfully disagrees with the characterization of this issue, as well as the finding as it contradicts the purpose of procurement statute and would lead to electric customers incurring costs for programs when they would not receive equal or greater benefits. (*See* Staff Comments at 18-19.)

First, no party has proposed that the Commission ignore the TRC test. Rather, Staff and Ameren Illinois believe that cost-effectiveness plays a gatekeeper role in what programs can be in the IPA Plan. However, just because a program is cost-effective does not end the analysis, which is something that the Commission has recognized. As noted by Staff, with respect to the procurement of energy efficiency that would lead to an **increase** in costs to electric customers, the Commission has found:

> only reduction in the cost of electric service that would take place with energy efficiency programs that are more expensive than electricity would be to shift the cost of electricity onto the purchase of energy efficiency, at a greater price. Procurement of such energy efficiency programs seems to contravene the spirit, if not the letter, of this portion of the statute.

ICC Docket No. 15-0541, Final Order (Dec. 16, 2015) at 102. This Commission finding makes sense as "the reduction in the cost of electric service is consistent with the standard which the Commission is required to apply to the approval of IPA Plans under the PUA." (ALJPO at 101 (citing 220 ILCS 5/16-111.5(d)(4)).) And the flip side is true as well, as "a program with a TRC greater than one but a UCT less than one would not meet that Section 5/16-111.5(d)(4) electric service cost requirement." (ALJPO at 101 (summarizing Staff's argument).)

Notwithstanding the intent and benefits that the LIMEP program could bring to the ComEd service territory, the Commission must be mindful of issuing findings that could be used to increase the costs of customers without providing the corresponding benefits. As noted in the ALJPO, the UCT "compares what electric ratepayers would spend to all the benefits they would receive." (ALJPO at 80.) Thus, when a program has a UCT of less than 1, that means the customer will be spending $1.00 and receiving less than $1.00 worth of benefits. In such a situation, the Commission should weigh heavily the impact on customers and, in light of Staff's arguments in this docket, the Final Order should adopt Staff's recommendation on this issue. Accordingly, AIC respectfully requests that pages 103-104 of the ALJPO be modified as follows:

> **6. Commission Analysis and Conclusion**
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> Staff proposes that ERC's LIMEP program be excluded from the 2017 Plan because its UCT score is 0.95, just below the 1.0 score necessary for a program to reduce the overall cost of electricity. The LIMEP program scored a 1.65 on the TRC test. The Commission notes, again, the applicable statutory language regarding the Commission's role in approving energy efficiency programs. It states:
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> the Commission shall also approve the energy efficiency programs and measures included in the procurement plan, including the annual energy savings goal, if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act.
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> 220 ILCS 5/16-111.5B(a)(5). In general, therefore, the Commission must approve cost-effective programs, i.e., those that pass the TRC. The Commission has found that it has some discretion in the approval of energy efficiency programs based upon the qualifier "to the extent practicable" which is included in the statutory language. With this understanding, the Commission ~~cannot~~ adopt**s** Staff's position ~~which seems to propose a bright line test based on the UCT and would essentially ignore the results of the TRC~~.
>
> ~~It is clear to the Commission that ERC's LIMEP program will provide many benefits, which are not captured in the UCT test. The Commission notes that this program is designed to lower the bills of low income households, which will reduce the number of households that are unable to make monthly energy payments and thereby reduce the utility's uncollectible expense. For these reasons, the Commission finds that this cost-effective program should be included in the 2017 Plan.~~
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> ~~Although the bidder of the Middle School Energy Education project did not intervene in this proceeding, the Commission notes~~

> ~~that its TRC score was even higher than the LIMEP at 1.78 and it had the same 0.95 UCT score. No further discussion was provided by the parties regarding this program, and the Commission will not remove this cost-effective program from the 2017 Plan either.~~

II. CONCLUSION

For the reasons set forth above, Ameren Illinois Company respectfully requests that the Commission modify the ALJPO as set forth herein.

Dated: November 21, 2016

Respectfully submitted,

AMEREN ILLINOIS COMPANY
d/b/a Ameren Illinois

By: */s/Mark W. DeMonte*______
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CERTIFICATE OF SERVICE

I, Mark DeMonte, an attorney, certify that a copy of the foregoing Brief 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 21st day of November, 2016.

*/s/ Mark W. DeMonte*_____
Attorney for Ameren Illinois Company