

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY

**Petition for Approval of the 2017 IPA
Procurement Plan pursuant to Section
16-111.5(d)(4) of the Public Utilities
Act**

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Docket No. 16-0453

STAFF OF THE ILLINOIS COMMERCE COMMISSION
REPLY BRIEF ON EXCEPTIONS

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The Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, and pursuant to Section 200.830 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits its Reply Brief on Exceptions (“RBOE”) in the above-captioned matter.

I. BACKGROUND

On September 27, 2016, the Illinois Power Agency (“IPA”) filed its Plan for the five year procurement planning period from June 2017 through May 2022 with the Illinois Commerce Commission (“Commission”) thereby initiating this docket.

On or about October 3, 2016, pursuant to Section 16-111.5(d)(3) of the Illinois Public Utilities Act (“PUA”), Staff and a number of parties served on each other and filed Responses and/or Objections to the Plan. On October 21, 2016, Staff and a number of parties served on each other and filed Responses. On October 31, 2016, Staff and a number of parties served on each other and filed Replies.

On November 14, 2016, the ALJ issued the ALJPO. The ALJ set November 21, 2016 and December 2, 2016 for the filing of the BOE and RBOE, respectively.

On November 21, 2016, Staff and the following parties filed a BOE:

IPA,

Commonwealth Edison Company (“ComEd”),

Ameren Illinois Company (“Ameren,” or “AIC”), and

Renewables Suppliers.

Set forth below is Staff’s reply to certain arguments made in the above parties BOEs.

The absence of a Staff reply to arguments or positions taken by a party in its BOE, does not imply that Staff agrees or accepts the arguments or position.

II. ARGUMENT

A. Use of Hourly Compliance Payments Held by Utilities [Section 8.3]

Response to Renewables Suppliers

Renewables Suppliers take exception to the ALJPO concerning the use of the Ameren’s and ComEd’s hourly alternative compliance payment (“ACP”) funds in the event of curtailment of long-term power purchase agreements (“LTPPA”). (Renewables Suppliers BOE, 6-12.) The IPA Plan allocates and prioritizes those hourly ACP funds as follows. First, the funds are used to continue making purchases of distributed generation (“DG”) renewable energy credits (“RECs”) pursuant to pre-existing multi-year contracts. Second, the funds are used to purchase curtailed LTPPA RECs during the upcoming plan year. Third, funds are committed to new multi-year DG REC contracts. (IPA Plan, 96-97.) The ALJPO adopts the IPA’s proposal. (ALJPO, 25.) The Renewables Suppliers essentially seek to make the LTPPAs the top priority for ACP funds. More specifically, they want the Commission (a) to explicitly add curtailment provisions to new DG REC contracts and (b) to implicitly read such provisions into pre-existing DG REC contracts. The ALJPO rejects the inclusion of such curtailment provisions in pre-existing and future DG RECs.

With respect to ***pre-existing*** multi-year DG REC contracts, Renewables Suppliers propose the untenable position in their exceptions language that these pre-existing contracts, are subject to the LTPPAs with respect to the use of utility hourly ACP funds (“the Commission agrees with the Renewables Suppliers that there is no reason that DG REC contracts should have priority over the LTPPAs with respect to the use of Hourly ACP Funds as a funding source.” and “[t]o give DG REC contracts priority over the LTPPA in terms of use of the Hourly ACP Funds could diminish ... ” (Renewables Suppliers BOE, 12.)). Renewables Suppliers argument in support of its position that pre-existing DG REC contracts do not have priority over the LTPPAs with respect to the use of Hourly ACP Funds as a funding source is that nobody in this proceeding has cited any “provisions in the DG REC contracts that commit the utility’s Hourly ACP Funds to payment of the amounts due under the contracts, or even identify the utility’s Hourly ACP Funds as the source of payments.” (Renewables Suppliers BOE, 7.) The Renewables Suppliers are confusing the issue. It is unnecessary for a contract to specify the buyer’s source of payments. Indeed, payment under these DG REC contracts, unlike the LTPPAs, is not contingent on any particular source of funds remaining available to the buyer. More to the point, these DG contracts contain no provisions related to curtailment of purchases based on the buyers’ losing access to Hourly ACP Funds. Thus, if the Commission were to accept Renewables Suppliers’ position, and redirect hourly funds from existing DG contracts to the LTPPAs, the utilities would still have to pay their DG REC suppliers the full amount owed. (“a contract should be construed so as to make the obligations imposed by its terms mutually binding upon the parties, unless such a construction is wholly negated by the language used” Minnesota Lumber Co. V. Whitebreast Coal Co., 160 Ill. 85 (1895).) As a result, the Commission will have painted itself into a corner, forcing itself to choose

between allowing retail rate increases that violate the statutory limitation (20 ILCS 3855/1-75(c)(2)) or refusing to allow the utilities to recover the cost of approved renewable energy resource procurements (which would violate 220 ILCS 5/16-111.5(l)).

With respect to **new** (yet-to-be-executed) multi-year DG REC contracts, Renewables Suppliers want the contracts to be written to allow for the same type of curtailments that are allowable under the LTPPAs and to further allow for those curtailments to occur prior to any curtailments of the LTPPAs. Here, at least, Renewables Suppliers are proposing something that can be done within the bounds of the law, even if it should not be done for policy reasons. As Staff argued in its Response to Objections, the curtailment provisions that were included in the LTPPAs were not inherently or unequivocally beneficial, but were added to the LTPPAs out of necessity, since funding for those 20-year contracts was highly uncertain. However, it is completely unnecessary to add such provisions to new DG contracts, since funding for the DG purchases is assured through the IPA's conservative approach. Only ACP funds that have already been accumulated are committed to DG REC procurements. Furthermore, adding such provisions to DG contracts would make them less attractive to potential bidders and would likely deter bids and/or increase the level of bid prices. Even without such provisions, the IPA has found it very difficult to attract enough bids to achieve the planned DG REC targets. To say the least, inclusion of such curtailment provisions would do nothing to attract more bidders to future IPA REC procurement events (for DG RECs or for any kind of RECs). (Staff Response to Objections, 6-7.)

Nevertheless, Renewables Suppliers still take exception to the lack of curtailment provisions in DG REC contracts and specifically to the following reasons given in the ALJPO for rejecting the Renewables Suppliers' proposal: (1) Curtailments of LTPPAs in

2017-2018 are unlikely. (2) If curtailments occur, the IPA could use the RERF to purchased curtailed RECs. (3) By statute, DG RECs must be procured under contracts of at least 5 years duration, therefore “a secure source of funding is necessary.” (4) The LTPPAs are primarily funded from the Renewable Resources Budget (“RRB”), not from the Hourly ACP Funds. (Renewables Suppliers BOE, 7, citing ALJPO at 26.) Renewables Suppliers also criticize other arguments by the IPA cited in the ALJPO: (1) The LTPPAs contained curtailment provisions and that the risk of curtailments may have been priced into bids made for LTPPAs. (2) The Commission’s directive in the 13-0546 Rehearing Order that Hourly ACP Funds should be used to purchase curtailed RECs was a one-time determination solely for purposes of that year’s (2014) procurement plan. (3) The Renewables Suppliers’ proposal would “prioritize the limited financial interests of LTPPA holders” over the IPA’s ability to use the Hourly ACP Funds to meet statutory RPS targets. Id. at 9-10.

Staff will not address every one of the arguments and counter-arguments alluded to above. However, taken as a whole, the reasons both for and against adding curtailment provisions to **new** DG REC contracts boil down to making a policy choice and not to interpreting the governing statutes or contract law. Indeed, perhaps Renewables Suppliers’ best argument is that there is no statutorily-mandated preference for RECs purchased through DG REC contracts, as opposed to RECs purchased through the pre-existing LTPPAs. Thus, Renewables Suppliers conclude, the Commission should not implicitly create any such preferences by omitting curtailment provisions (which already exist in the LTPPAs) from any new DG REC contracts. On the other hand, there is a stronger argument against adding curtailment provisions to DG REC contracts. That argument is that the Commission should not try to make DG REC contracts less attractive

to bidders and more like the LTPPA by adding troublesome curtailment provisions. While it was necessary to add curtailment provisions to the LTPPAs, it is optional and counterproductive to add them to new DG REC contracts, simply to force some kind of parity. Just as there is no statutorily-mandated preference for RECs purchased through DG REC contracts versus RECs purchased through the pre-existing LTPPAs, there is also no statutorily-mandated parity between those two REC sources.

Renewables Suppliers' final argument in favor of adding curtailment provisions to new DG REC contracts proceeds as follows: (A) The Commission's determination in the Docket No. 13-0546 Rehearing Order that the Hourly ACP Funds should be used to purchase curtailed RECs was based on public interest considerations, including evidence that the curtailment of purchases under the LTPPAs and the consequent loss of contracted revenues by the LTPPA suppliers was adversely impacting the development of renewable energy facilities in Illinois and outside of Illinois to serve the Illinois market. (B) Giving new DG REC contracts priority over the LTPPAs with respect to use of the Hourly ACP Funds reintroduces the uncertainties and concerns about the development of new renewable generation in Illinois that the Commission sought to eliminate in the Docket No. 13-0546 Rehearing Order, and would again discourage new investment in renewable generation facilities in Illinois. Id. at 10-12.

The above-summarized argument of the Renewables Suppliers is flawed in at least two major respects. First, declining to add curtailment provisions to new DG REC contracts is not exactly the same thing as giving them priority over the LTPPAs. The conservative practices of (a) using only already-collected hourly ACP funds for DG REC contracts, and (b) only entering into new contracts when the LTPPAs are not being curtailed, help preserve funding for both the existing LTPPAs and the existing DG REC contracts.

Second, the Plan approved in Docket No. 13-0546 included no existing or new DG contracts. Thus, the Commission was not considering the impact of adding curtailment provisions to DG contracts; it was dealing with the aftermath of such provisions having been included in the LTPPAs. Had the Commission been considering the impact of such provisions, it may have concluded (like it did for the LTPPAs) that DG contract curtailments would adversely impact the development of renewable energy facilities in Illinois and outside of Illinois to serve the Illinois market, would reintroduce uncertainties and concerns about the development of new renewable generation in Illinois, and would again discourage new investment in renewable generation facilities in Illinois. That is, the Renewables Suppliers' proposal does not eliminate uncertainties and concerns about curtailments, it simply widens their applicability to an ever-widening population of REC suppliers.

For the above reasons, Staff recommends that the Commission reject Renewables Suppliers' dual proposal (a) to explicitly add curtailment provisions to new DG REC contracts and (b) to implicitly read such provisions into pre-existing DG REC contracts.

B. 2016 Section 16-111.5B SAG Workshop Subcommittee [Section 9.2]

Response to ComEd

ComEd takes exception to the ALJPO on the issue of reporting expected non-program-specific Section 16-111.5B administrative costs in future procurement plans, while the IPA takes no exception to the ALJPO on this issue in the interest of reducing the number of contested issues while admitting that the ALJPO decision imposes a negligible burden for the IPA. (ComEd BOE, 3-6; IPA BOE, 1-2.) The Commission should reject ComEd's exception language on the issue of reporting expected non-program-specific Section 16-111.5B administrative costs in future procurement plans. (ComEd BOE, 3-6.) For the sake of brevity, Staff will not reiterate all of its previous arguments concerning this

issue but rather incorporates those herein by reference. (See Staff Objections, 7-10; Staff Reply, 4-7.) Staff believes that no changes are needed to the ALJPO.

The Commission should reject ComEd's proposed language in its Exception No. 1 that would have the Commission "decline[] to adopt[] Staff's proposal, which would not provide the Commission with information relevant to the determinations to be made under Section 16-111.5B." (ComEd BOE, 6.) A Commission conclusion on this issue should not be based upon ComEd's faulty argument. Specifically, ComEd argues that "the projections that Staff seeks are not relevant to any determination to be made in this docket." Id. Staff disagrees. As Staff explained in its Reply, Section 16-111.5B(a)(3) requires, among other things, an assessment of whether programs reduce the overall cost of electric service and how the cost of such measures compares to the prevailing cost of supply. (Staff Reply, 6.) When assessing the incremental value of adding a program to the collection of Section 16-111.5B programs, this assessment should be done ignoring non-scalable non-program-specific administrative costs. It does not mean, however, that the IPA and the Commission should not consider whether Section 16-111.5B programs will in total prove costlier than the cost of comparable supply or raise the overall cost of electric service for the utilities' customers. Id. Failing to incorporate all costs addressed by Section 16-111.5B provides a misleading picture of the expected costs associated with the procurement of energy efficiency as well as the net benefits of the procurement of energy efficiency pursuant to Section 16-111.5B. By failing to report a portion of Section 16-111.5B costs, the actual net benefit of the Section 16-111.5B programs in total is certainly less than an assessment of net benefits that includes only a partial reporting of costs. Id.

In conclusion, Staff believes that no changes are needed to the Commission Analysis and Conclusion regarding Section 9.2 of the IPA Plan (ALJPO, 38) and the

Commission accordingly should reject ComEd's faulty arguments and proposed language changes.

C. Improving/Refining Bids [Section 9.4.2]

Response to ComEd

ComEd takes exception to the ALJPO, for not approving its proposed contract terms and conditions. (ComEd BOE, 7.) In support of the adoption of its contract terms and conditions, ComEd argues that the Commission needs to provide clear, specific guidance to put to rest persisting uncertainty, the record evidence includes substantial evidence to support the proposed contract terms and conditions, and nothing precludes the Commission from approving the contract terms and conditions. Id. at 6-15. Staff in its Response and Reply has previously responded to these arguments. In response to ComEd's argument that nothing precludes the Commission from approving the contract terms and conditions, as Staff discussed in its Response, approval of ComEd's proposed contract templates as part of the 2017 IPA Plan would be inconsistent with the PUA, in particular, Section 16-111.5B(a)(5) which provides in part that:

In the event the Commission approves the procurement of additional energy efficiency, it shall reduce the amount of power to be procured under the procurement plan to reflect the additional energy efficiency and shall direct the utility to undertake the procurement of such energy efficiency, which shall not be subject to the requirements of subsection (e) of Section 16-111.5 of this Act. The utility shall consider input from the Agency and interested stakeholders on the procurement and administration process.

220 ILCS 5/16-111.5B(a)(5) (emphasis added). In this matter, ComEd seeks approval of contract templates it developed on its own. ComEd did not seek Staff's input on the contract templates. Staff first became aware of the ComEd's contract template proposals when ComEd included them with its comments on the IPA's draft plan. (Staff Response,

8.) ComEd acknowledges this in its BOE. (ComEd BOE, 12.) ComEd failed to seek the IPA's input as well; the IPA makes no reference in its Petition to reviewing ComEd's contract templates prior to ComEd submitting comments on the IPA's draft plan. (IPA Petition, 7.) Finally, in its Objections, ComEd makes no mention of seeking interested stakeholders' input on the contract templates. In light of ComEd's failure to seek input from the IPA and interested stakeholders on its contract templates as required by statute, the Commission should decline to adopt ComEd's contract templates and related proposed modifications to the IPA Plan.

The Commission should also decline to adopt ComEd's contract templates and the related proposed modifications to the IPA Plan for the reasons set forth by the IPA in its Petition. The IPA correctly asserts that "general guidance from the Commission in combination with and identification and resolution [of] any specific, discrete concerns should achieve the same ends" as attaching contract templates to the IPA Plan. Id. Consistent with providing guidance to the utilities, Section 9.3 of the Plan sets forth numerous consensus items related to vendor energy efficiency contracts which are part of the procurement and administration process of energy efficiency procurement which the IPA and other interested stakeholders are to provide input on. (IPA Plan, 109.) Staff further agrees with the IPA that, if the Commission is inclined to approve energy efficiency contract templates, such a process – and the templates approved in the process – should apply to all utilities (i.e., Ameren) and not just ComEd. (IPA Petition, 7.) Finally, Staff agrees with the IPA that litigating contract terms would add additional layers of review and analysis "to an already time constrained proceeding." Id.

In response to ComEd's argument that the Commission needs to provide clear, specific guidance to put to rest persisting uncertainty (ComEd BOE, 7-8), there is no

regulatory uncertainty regarding vendor contracts. In support of its regulatory uncertainty argument, ComEd's BOE discusses two prior Commission orders. Id. The first of these is the Commission's Order approving the IPA's 2016 Plan, ICC Docket No. 15-0541. The second Order concerns a reconciliation proceeding of ComEd's Rider EDA (Energy Efficiency and Demand Response Adjustment Rider) for the June 2013 through May 2014 billing period, ICC Docket No. 14-0567. Id. ComEd suggests that these two orders have created regulatory uncertainty for ComEd. Id. ComEd argues that in the 2016 IPA Plan Order, the Commission rejected the withholding of payment for nonperformance, but in the ComEd Rider EDA reconciliation proceeding, the Commission disallowed cost recovery for ComEd because ComEd had not withheld payment for nonperformance. Id.

The two orders are not inconsistent for the following reasons. First, ComEd fails to acknowledge that the Commission in the 2016 IPA Plan Order clearly stated that, with respect to the ComEd Rider EDA reconciliation proceeding, the "[i]ssues presented in that proceeding will be resolved in that case." Illinois Power Agency, ICC Docket No. 15-0541, 111 (December 16, 2015) ("2016 IPA Plan Order"). Accordingly, any suggestion that the Commission Order in the 2016 IPA Plan proceeding resolved the contract question raised in the Rider EDA reconciliation docket is mistaken. Second, ComEd mischaracterizes the 2016 IPA Plan Order. The Commission did not reject on the merits Staff's recommendation regarding withholding of payment, but rather simply directed the parties to pursue that issue in workshops. Therefore, since the Commission wanted the issues addressed in workshops, it declined at that time to adopt Staff's specific recommendation, but did not speak to the merits of withholding payment. Third, the basic facts in the two dockets are very different. The Rider EDA reconciliation proceeding deals with assessing the prudence of ComEd management decisions made prior to and during the June 2013 through May

2014 billing period. The 2016 IPA Plan docket concerns a subsequent time period commencing two years later and actions to be taken during that later period of time. Any consideration of an order addressing a period of time subsequent to the relevant time of the reconciliation period and issued after the relevant time period, in a prudence analysis, would involve impermissible hindsight review.¹

It is also worth noting that ComEd has taken an appeal from the Commission's Order concerning ComEd's Rider EDA June 2013 through May 2014 reconciliation, ICC Docket No. 14-0567, which it does not mention in its BOE. (ComEd v. Illinois Commerce Comm'n, No. 1-16-2410, (filed September 13, 2016)). ComEd argued in its application for rehearing that the two orders are "contradictory", (Illinois Commerce Comm'n v. ComEd, ICC Docket No. 14-0567, ComEd Application for Rehearing, 5), and presumably will raise the same argument on appeal. Certainly, the issue of whether those two orders are contradictory, which they are not, will be addressed by the Appellate Court in ComEd's appeal and need not be resolved in this proceeding.

Finally, related to ComEd's argument that the record evidence includes substantial evidence to support the proposed contract terms and conditions, ComEd argues that "[n]o Party has taken issue with any particular proposed contract term or conditions" (ComEd BOE, 12.) Staff disagrees with that representation. While the IPA did state that it has no (known) objections to the actual content of the contract templates, Staff in its Reply noted that Staff has not had sufficient time to address all potential problems with the

¹ The Commission has defined prudence as that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made. In determining whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible. ICC Order Docket No. 88-0142, 25-26 (February 5, 1992).

templates other than to observe that it does have identifiable concerns with the ComEd contract templates. (Staff Reply, 8.)

Based upon all of the above, the arguments made in Staff's Response and Reply and especially in light of ComEd's failure to seek input from the IPA and interested stakeholders on its contract templates as required by statute, the Commission should decline to adopt ComEd's proposed contract terms and conditions and related proposed modifications to the IPA Plan.

D. Programs Deemed "Not Responsive to the RFP" by Ameren Illinois [Section 9.5.4] and Policy Implications [Section 9.5.4.1]

Response to IPA

Staff disagrees with several arguments made by the IPA in its BOE. First, the IPA reiterates its argument that "energy efficiency programs featuring non-incidental levels of gas savings should be evaluated taking those savings into account rather than excluded from consideration." (IPA BOE, 2.) The IPA further argues that "reliance on a test other than the TRC Test – such as Ameren's Cost of Supply Test or the Utility Cost Test ("UCT"), each of which ignores gas savings as a benefit – effectively writes the specific requirements of TRC out of the law. ..." Id. at 2-3. Accordingly, the IPA supports language in the ALJPO which states "... generally speaking, if an energy efficiency program passes the TRC test, it should be included in the procurement plan." Id. at 4. Staff disagrees with the IPA and ALJPO on this issue and accordingly recommended in its BOE that the language quoted above be stricken from the ALJPO. (Staff BOE, 8.) As set forth in Staff's BOE, "cost effectiveness must not be considered in a vacuum." Id. at 6. The IPA like the ALJPO fails to look at the statute as a whole and thus fails to recognize that the Commission must also consider the cost of electric service in addition to cost effectiveness when deciding whether

or not to approve energy efficiency programs as part of the IPA Plan. Id. A court must not focus on a single sentence or phrase in a statute. Italia Foods, Inc. v. Sun Tours, Inc., 2011 IL 110350, ¶12 (2011). Rather, a court should consider the statute in its entirety, including the subject the statute addresses, and the apparent intent of the legislature in enacting the statute. Hayashi v. Illinois Dept. of Financial and Professional Regulation, 2014 IL 116023, ¶16 (2014); In re N.C., 2013 IL App (3d) 120438, ¶15 (2013). No part of the statute should be rendered meaningless or superfluous. Skaperdas, 2015 IL 117021, ¶15. If the cost of electric service was not to be considered when deciding whether to approve or not approve energy efficiency measures and programs as part of the IPA plan, then the legislature would not have included in the standard for approval of the IPA Plan that the plan ensure “electric service at the lowest total cost over time”. 220 ILCS 5/16-111.5(d)(4) (emphasis added).

The IPA took issue with the ALJPO for its conclusion that with respect to dual fuel programs those programs would be evaluated “on a case by case basis.” (IPA BOE, 3-5.) The ALJPO reached that conclusion because it believed that no “clear definition of when a program would not be primarily focused on electric savings” had not been provided. Id. at 3. The IPA argues that the issue should be addressed through the workshop process rather than on a case by case basis. Id. at 4. Staff disagrees with the IPA. A workshop process is not needed to address this issue. As Staff set forth in its BOE, Staff provided a definition of when a program would not be primarily focused on electric savings. Staff provided that definition in its Response when it agreed that the NRDC’s secondary test (the electric-only Utility Cost Test (“UCT”)) to address cross subsidization was reasonable. Staff agreed with the NRDC that test was reasonable because it compares only what electric ratepayers would spend to all the benefits they would receive. (Staff BOE, 7.)

Based upon the above and the arguments previously set forth in Staff's BOE, Objections, Response and Reply, the Commission should reject the IPA's arguments in support of the ALJPO on this issue and adopt Staff's recommended language changes from its BOE.

E. ComEd Programs Recommended for Approval [Section 9.6.8]

Response to Ameren

Ameren Illinois takes exception to the ALJPO declining to adopt Staff's proposed rejection of the LIMEP program, which was bid in the ComEd service territory and rejecting the "bright line test based on the [Utility Cost Test ("UCT") that would essentially ignore the results of the TRC". (AIC BOE, 4.) Staff and AIC are basically in agreement that the characterization on this issue in the ALJPO contradicts the purpose of the procurement statute and would lead to electric customers incurring costs for programs when they would not receive equal or greater benefits. (Staff Comments, 18-19; AIC BOE, 5.)

While Staff generally agrees with Ameren Illinois' exception and rationale on this issue, Staff prefers its proposed language changes from its BOE (Staff BOE, 16-17) rather than the proposed language changes to the ALJPO at pages 103-104 that AIC suggests in its BOE. (AIC BOE, 6.) For the reasons set forth in Staff's BOE, Staff continues to believe the recommended substitute language it provided to the Commission Analysis and Conclusion in its BOE more accurately reflects the changes that are necessary to remove both programs from Plan. (Staff BOE, 16-17.)

For the convenience of the Commission, Staff's recommended language changes from its BOE are set forth below.

Recommended Substitute Language
(ALJPO, 103-104.)

Commission Analysis and Conclusion

Staff proposes and Ameren agrees 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 UCT is provided to satisfy Section 16-111.5B(a)(3)(D). While ~~t~~The LIMEP program scored a 1.65 on the TRC test the program is expected to increase the cost of electric service. The Commission notes, again, the applicable statutory language regarding the Commission's role in approving energy efficiency programs. It states:

[p]ursuant to paragraph (4) of subsection (d) of Section 16-111.5 of this Act, 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.

~~220 ILCS 5/16-111.5B(a)(5). However, cost effectiveness cannot be looked at in a vacuum. The Commission must also consider the cost of electric service. 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 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, and because the LIMEP program fails to satisfy Section 16-111.5B(a)(3)(D), the Commission finds that this LIMEP cost-effective program should not be included in the 2017 Plan.~~

~~Although the bidder of the Middle School Energy Education program~~ject~~ did not intervene in this proceeding, the Commission notes that even though its TRC score was even higher than the LIMEP at 1.78 and it had the same 0.95 UCT score. That score indicates that it is expected to increase the cost of electric service. Accordingly, for the same reasons set forth above, including that this program fails to satisfy Section 16-111.5B(a)(3)(D), this program is also removed from the 2017 Plan. 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.~~

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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