

Docket No.: 16-0453
S.O.M.: 12/13/16
Deadline: 12/27/16

MEMORANDUM

TO: The Commission

FROM: Leslie Haynes, Administrative Law Judge

DATE: December 7, 2016

SUBJECT: Illinois Power Agency

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

RECOMMENDATION: Enter attached Order approving 2017 Procurement Plan

I. PROCEDURAL HISTORY

On September 27, 2016, the Illinois Power Agency (“IPA”) filed with Commission its 2017 Power Procurement Plan (“2017 Plan”), initiating this proceeding. Among other things, the purpose of the 2017 Plan is to secure electricity commodity and associated 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”).

Following the filing of the 2017 Plan, the following entities were granted leave to intervene: Citizens Utility Board (“CUB”); the Renewables Suppliers; Environmental Law & Policy Center (“ELPC”); ComEd; MidAmerican; Ameren; Natural Resources Defense Council (“NRDC”); Retail Energy Supply Association (“RESA”); the Board of Trustees of the University of Illinois on behalf of the Energy Resources Center at the University of Illinois at Chicago (“ERC”); and the Illinois Solar Energy Association (“ISEA”). The Illinois Attorney General’s Office on behalf of the People of the State of Illinois (“AG”) filed an appearance in this docket.

On October 3, 2016, Objections and Comments to the Plan (“Cmnts.”) were filed by Ameren, ComEd, the Renewables Suppliers, MidAmerican, ELPC, the AG, NRDC, and Staff of the Commission (“Staff”). Parties were notified that, pursuant to Section 16-111.5(d)(3) of the Public Utilities Act (“PUA”), no hearing in this matter was determined to be necessary.

On October 20, 2016, the Renewables Suppliers filed a Response to the Objections. Pursuant to the schedule issued by the Administrative Law Judge, Responses to Objections (“Resp.”) were filed on October 21, 2016 by the IPA, the AG, Staff, ComEd, Ameren, ELPC, MidAmerican, NRDC, and ERC. ISEA served its Comments on October 21, 2016 and filed them on October 27, 2016. Thereafter, Replies

to Responses (“Rep.”) were filed by the AG, the IPA, Ameren, the Renewables Suppliers, ELPC, ComEd, NRDC, and Staff on October 31, 2015.

The Proposed Order was served on the parties on November 14, 2016. Briefs on Exceptions were filed on November 21, 2016. Replies to Exceptions were filed on December 2, 2016. The following is a brief summary of some of the contested issues.

II. ISSUES

A. Section 8 Renewable Resources Availability

1. Section 8.3 Use of Hourly Alternative Compliance Payments Held by the Utilities

a. Analysis

This issue involves both the timing of the IPA’s distributed generation (“DG”) procurement event and also the prioritization of the use of the hourly alternative compliance payments (“ACP”). The Renewables Suppliers assert that the 2017 Plan should specify that the spring 2017 DG REC procurement event will not be held until after ComEd and Ameren file their March 2017 load forecast updates and it is determined whether or not curtailments of the long term power purchase agreements (“LTPPAs”) for ComEd or Ameren will be necessary. The Renewables Suppliers have an additional objection relating to the prioritization of accumulated hourly ACP funds to purchase DG renewable energy credits (“RECs”) over the purchase of curtailed LTPPA RECs. The Renewables Suppliers see no reason why payment for DG RECs should be a priority use of accumulated hourly ACP funds.

b. Recommendation

I recommend that the Commission not adopt the Renewables Suppliers’ position regarding DG RECs. The attached Order does not adopt the Renewables Suppliers’ position regarding the timing of the spring DG REC procurement, but rather finds persuasive the IPA’s statement that procurements are scheduled and conducted based upon the availability of internal and external resources, the timetable for contract development and completion, maximizing bidder participation, and other concerns related to meeting statutory requirements at the lowest total cost over time.

In addition, I do not recommend that the payment of LTPPAs take precedence over the payment of DG RECs. Unlike contracts for DG RECs, the LTPPA agreements have curtailment provisions written into the contracts. Presumably, the price of these contracts reflect the inclusion of curtailment provisions.

B. Section 9 Energy Efficiency**1. Section 9.2 2016 Section 16-111.5B SAG Workshop Subcommittee****a. Analysis**

The participants to the Stakeholder Advisory Group (“SAG”) were unable to reach agreement regarding the reporting of energy efficiency costs. Staff asserts that the Commission should require transparent reporting of all expected Section 16-111.5B energy efficiency costs by directing the utilities to report and the IPA to include in the 2017 Plan, the total expected costs to be incurred for Section 16-111.5B.

b. Recommendation

I recommend that the Commission adopt Staff’s position and require the utilities to report, and the IPA to include in its future plans, the total expected costs to be incurred for Section 16-111.5B.

2. Section 9.4.2 Improving/Refining Bids**a. Analysis**

The AG proposes that utilities be required to include in their requests for proposals (“RFPs”) notice to vendors that the utilities will: 1) scrutinize the cost per kilowatt hour saved to ensure that the price, while passing the TRC, is not inflated and, if necessary, negotiate a reduced cost consistent with the utility’s Section 8-103 contracting practices; and 2) scrutinize the implementation strategy and program design, including the energy efficiency measure mix, to ensure that the program is consistent with best practices.

Also under consideration in this section of the Order are ComEd’s proposed contract templates. ComEd believes that general guidance from the Commission will be helpful, but not sufficient to resolve the contracting uncertainty that remains following the orders in the 2016 Plan Docket and Docket No. 14-0567. To ensure that utilities, vendors, and stakeholders have the clarity and confidence to move forward with energy efficiency contracts that strike the correct balance, ComEd attached its energy efficiency contract templates to its Comments on the IPA Draft Plan, and requested that they be attached to the filed Plan for Commission review and approval. Because the IPA energy efficiency programs include both ComEd-managed programs and third-party managed programs, ComEd included its contract templates applicable to both kinds of programs.

b. Recommendation

The attached Order declines to adopt the AG’s proposal to scrutinize program design because it fails to account for the utilities’ different roles in Section 8-103 and Section 16-111.5B energy efficiency programs. Section 8-103 requires that ComEd and Ameren offer or procure various energy efficiency programs for the purpose of reducing energy consumption. Unlike the utility-designed and implemented energy efficiency plans under Section 8-103, the core of Section 16-111.5B’s efficiency procurement is an RFP

process where third-party bidders implement those winning programs that are approved by the Commission. In other words, the AG's proposal fails to reflect that Section 16-111.5B envisions a market-driven process and I recommend against its adoption.

The attached Order also does not adopt ComEd's proposed contract templates because they have not been discussed at SAG and are not sufficiently supported in the record. I recommend that the Commission find that the question of the appropriate level of contract scrutiny, as well as which contract terms best protect ratepayers while not reducing bid participation should be discussed further in SAG workshops. Issues like these are best reviewed in the workshop context, where the stakeholders can consider all of the relevant facts and circumstances in a collaborative environment, rather than in an expedited approval docket.

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

a. Analysis

The question here is whether the Commission has the authority to exclude a dual-fuel program that passes the total resource cost ("TRC") test from a procurement plan, and if so, how that judgment be exercised. Staff and Ameren argue that programs that are not primarily focused on electric savings should not be included in procurement plans.

b. Recommendation

As discussed in the *2016 Plan Docket*, the Commission approves cost-effective programs and measures to the extent practicable and the Commission has the authority to use its judgment to set practical limits on the procurement of energy efficiency. *Illinois Power Agency*, Docket No. 15-0541, Order at 100 (Dec. 16, 2015). The attached Order finds that, generally, if an energy efficiency program passes the TRC, it should be included in the procurement plan. Without having been provided a clear definition of when a program would not be primarily focused on electric savings, the attached Order concludes that the Commission will consider dual-fuel programs on a case-by-case basis. The Order also agrees with the parties that in exercising this judgment, the best measure for guiding the Commission's determination of whether cross-subsidization exists is the utility cost test ("UCT") because it only compares what electric ratepayers would spend to all the benefits they would receive. For the most part, however, I recommend that the Commission find that if a program passes the TRC, it should be included in the procurement plan.

4. Senate Bill 2814

a. Analysis

The AG, in its Reply Brief on Exceptions, informs the Commission that the General Assembly passed Senate Bill 2814 on December 1, 2016. The Governor has not yet signed it at the time of this writing. The effective date of the bill is June 1, 2017. If it becomes law, the Commission findings on Section 16-111.5B of the PUA would be moot.

In other words, if the Governor signs the legislation, the issues that address Section 9 of the 2017 Plan will become moot as of June 1, 2017.

b. Recommendation

The Governor has not yet signed this bill and, thus, I recommend that the Commission enter the attached Order which is written in accordance with current law.

III. CONCLUSION

Accordingly, I recommend that the Commission adopt the attached Order. This matter has a deadline of December 27, 2016.

LH:jt