STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	**)**	
Petition for Approval of the	**)**	**Docket No. 11-0660**
220 ILCS 5/16-111.5(d) Procurement Plan.	**)**	

VERIFIED OBJECTIONS OF THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION TO THE ILLINOIS POWER AGENCY'S PROCUREMENT PLAN

The Illinois Competitive Energy Association ("ICEA") submits these Verified Objections to the Illinois Power Agency's ("IPA") 2012 Power Procurement Plan ("the Plan") filed with the Illinois Commerce Commission ("Commission" or "ICC") pursuant to Section 16-111.5(d)(2) of the Illinois Public Utilities Act ("PUA") (220 ILCS 5/16-111.5(d)(2)). This Objection is verified by Mr. Kevin Wright, the President of ICEA, who is competent to testify to the facts herein. Additionally, a redlined version of the Plan reflecting ComEd's comments is attached as Appendix A.

ICEA is an Illinois-based trade association of some of the largest and most active alternative retail electric suppliers ("ARES") seeking to preserve and enhance opportunities for customer choice and competition in the Illinois electric market.[1] Our members serve residential, commercial, industrial, and public sector customers, ranging from Main Street to the Fortune 500, including the manufacturing industry; retail

[1] ICEA's members include Ameren Energy Marketing, Champion Energy Services, Constellation NewEnergy, Direct Energy Services, Exelon Energy Company, FirstEnergy Solutions, Integrys Energy Services, MC Squared Energy Services, Midwest Generation-Edison Mission Solutions, Nordic Energy Services, and Reliant.

businesses; the State of Illinois and local units of governments; cultural, sporting, and educational institutions; as well as hospitals, hotels, and restaurants. Our members also provide service to certain Municipalities that have enacted Governmental Aggregation programs. ARES provide more than half of the electricity consumed in Illinois.

ICEA has a direct interest in the Plan because the IPA's structure for procuring electricity for eligible customers impacts those customers' ability to benefit from retail competition and a choice in their electric supplier. Additionally, the procurement of renewable energy resources under the Plan increases risk for ARES and potentially impacts the costs paid by their customers.

While ICEA supports many aspects of the Plan, there are several proposals that are outside the IPA's authority under the PUA and the Illinois Power Agency Act[2] ("IPA Act") and contrary to the public interest, including ICEA members' customers. ICEA urges the Commission to ensure that the final Plan is consistent with the PUA and the IPA. Additionally, ICEA makes suggestions for improving the proposed procurement which will benefit customers.

OBJECTIONS

I. The IPA Procurement Plan Should Not Include Bids for Long-Term RECs

In the Plan, the IPA proposes to solicit bids for RECs for periods up to 20 years.[3] ICEA opposes this proposal because it provides no benefits to consumers but will assuredly increase prices for ARES' customers. By law, at least 50% of ARES'

[2] 20 ILCS 3855/1-1 et seq.

[3] Plan at 50.

renewable portfolio standard ("RPS") compliance obligation must be satisfied via payment of alternative compliance payments ("ACPs").[4] The ACP rate is directly derived from the amount eligible customers pay for renewable resources procured by the IPA. Longer-term REC contracts are inherently more expensive, and projecting both the volume requirements and REC market prices for anything longer than a year is fundamentally risky, which the IPA itself admits.[5]

Pursuant to the Commission's Order in Docket No. 09-0373, the IPA has already procured almost half of the 2012/2103 renewable resources requirement through 20-year contracts at an average bundled price of $55.18 per MWh. Although the portion of the bundled price that is attributable to the REC budget is unknown because it is calculated based on a confidential market forecast, when based on publicly available information, an estimated REC price of $15 is likely close to the actual implied cost. At an estimated $15, the long-term contract will account for over 40% of next year's total REC budget, and *significantly* increase the ACP. Compare that to the less than $1 paid on average for 1-year RECs procured by the IPA last year and it is clear that longer-term RECs are exorbitantly more expensive. Since long-term renewables already account for a significant portion of the renewable budget, the proposal to procure additional amounts of long-term renewables would result in a very unbalanced portfolio and an unjustified increase to the ACP and, thus, should not be permitted. Given that the utilities are

[4] 220 ILCS 5/16-115D(d).

[5] See supra n.19 and accompanying text.

forecasting the range of residential customer switching in 2013 to be as high as 53%,[6] further additional long term contracting puts unnecessary risk on Illinois customers whether served by the utilities or ARES.

The IPA itself acknowledges that "meeting the RPS obligation is growing more complicated over time with volume requirements, budgets, and the costs of pre-existing contract obligations all operating in a variable manner."[7] It further notes that as retail competition develops in Illinois, the RPS volume goals, as well as the available budget, will diminish over time.[8]

In addition to acknowledging the complications and risks associated with the renewable resources procurement, the IPA recognizes that in prior years, the RPS obligation was successfully met through solicitations of annual RECs only.[9] As stated above, recent short-term wind RECs have been procured for under $1/REC. While solar RECs are less plentiful—and thus more expensive—the short-term market prices for solar RECs have been declining steadily in other states.[10]

Yet, the IPA inexplicably proposes to complicate the REC procurement process and drastically increase costs by proposing terms as long as 20 years. The IPA has provided no explanation as to why it seeks to increase the REC contract terms, let alone shown that it meets the requirement to procure "cost-effective" renewable energy

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[6] *See*, page 29 of ComEd's Load Forecast stating under the low-load scenario only 46.7% of residential customers are expected to be taking Blended service.

[7] Plan at 49.

[8] Id. at 48.

[9] Id. at 49.

[10] Id.

resources.[11] Because the REC market is not visible beyond a few years, there is no way for the IPA to create a reliable benchmark for long-term RECs. This lack of long-term reliable price benchmarking in turn makes it impossible for the IPA to demonstrate that its Plan meets the "cost-effective" test.

Finally, the IPA already has a mechanism to procure long-term REC contracts that places no additional risk on Illinois consumers. The Renewable Energy Resources Fund was established by the General Assembly for the IPA to procure long-term renewable energy resources contracts without further increasing the costs and price risks to customers.[12] Given this statutory obligation, it is not justifiable to allow the IPA to use this process to enter into long-term contracts that by its own admission are risky and more costly.

II. The IPA Should Eliminate the Plan's Clean Coal Requirement

The Plan includes a proposal to procure up to 250 MW of electricity generated by a clean coal facility.[13] Contrary to the IPA's assertions, the procurement of clean coal is not required by the Illinois Power Agency Act ("the Act").[14] The requirement exists only when and at such time as the utilities enter into sourcing agreements with the "initial clean coal facility," which is a defined term under the Act. This conclusion is supported

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[11] "The procurement plans shall include cost-effective renewable energy resources." 20 ILCS 3855/1-75(c).

[12] "The Agency shall procure renewable energy resources at least once each year in conjunction with a procurement event for electric utilities . . . and shall, whenever possible, enter into long-term contracts." Id. at 1-56(c).

[13] Plan at 54-55.

[14] 20 ILCS 3855/1-1 et seq.

by the fact the IPA did not include clean coal in its two prior procurement plans, despite the fact that the clean coal portfolio standard provisions in the Act were effective at those times.[15] Furthermore, no parties in those earlier procurement plan proceedings before the Commission raised any clean coal issues, nor did the Commission itself raise or address same in its orders approving the plans.[16] No party does or can assert that such an "initial clean coal facility" exists. Without any such facility or a resulting statutory obligation to include clean coal in the procurement plan, the IPA has absolutely no basis to subject eligible customers to the exorbitant increased costs, and impose even greater cost risk on ARES' customers.

Since there is no requirement to include clean coal in the procurement, the IPA can only do so provided 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."[17] There can be no credible argument made by any party that electricity from a clean coal facility meets the "lowest total cost" requirement of the PUA, and indeed, in its draft plan, the IPA did not even try. Because no clean coal facility currently exists, it is unclear how the IPA would even establish the required benchmark. The cost study filed at the Commission by the Taylorville Facility showed costs more than $8 billion above market over the next 30 years and serves as

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[15] See Ill. Power Agency Power Procurement Plan to the Ill. Comm. Comm'n, Docket No. 09-0373 (Ill. Comm. Comm'n, Sept. 30, 2009); See Ill. Power Agency Power Procurement Plan to the Ill. Comm. Comm'n, Docket No. 10-0563 (Ill. Comm. Comm'n, Sept. 29, 2010).

[16] Final Order, Docket No. 09-0373 (Ill. Comm. Comm'n, Dec. 29, 2009); Final Order, Docket No. 10-0563 (Ill. Comm. Comm'n, Dec. 21, 2010).

[17] 220 ILCS 5/16-111.5(j)(ii); 20 ILCS 3855/1-5.

proof that the "lowest cost over time" requirement simply cannot be met by any plan that proposes to include the procurement of power from clean coal facilities.

Because the clean coal portfolio standard applies a cost cap for clean coal procurement on the eligible customers, but applies none for the ARES' customers, the IPA's proposal places even greater risk on the latter. It is unlikely that 250 MW of electricity from clean coal – because of its significantly above-market costs – could be procured over the next 20 years by eligible customers alone because of the statutory cost cap. This is especially true given the recent positive developments in retail competition and potential for significantly increased shopping by residential customers over those years. Given the existing language of the clean coal portfolio standard and failure of the legislation to provide any protection to ARES' customers, there is a significant risk that ARES' customers will be called upon to help fund the clean coal contracts that the eligible customers cannot. Accordingly, ICEA urges the IPA to eliminate the costly, unnecessary, and unsupported proposal to procure electricity from a clean coal facility.

III. The IPA's Proposal for a Separate Small and Mid-Sized SREC Procurement is Premature and Inconsistent with the Act and Should be Denied

The IPA includes a proposal in the Plan (which was not included in its original draft plan) to procure no less than 25% of the solar renewable energy procurement obligation from small and mid-size distributed solar systems ("DG Solar") in Illinois.[18] This specific proposal is inconsistent with the IPA Act, is devoid of necessary detail, and may increase the costs paid for RECs and therefore the ACP. For all those reasons, this

[18] Plan, pp. 53-4.

proposal should be denied. ICEA may support other appropriately designed SREC plans that achieve specific solar goals while maintaining the tenets of a competitive retail market as part of future collaborative discussions on this matter.

The IPA Act provides a statutory preference for all solar resources generally, but does not provide a carve-out for specific solar programs based on size or interconnection status (i.e., connected to distribution vs. transmission system). The Act further requires that all renewable energy resources procured be "cost-effective" based on established benchmarks. Thus, there is no legal authority for the IPA to select winning solar renewable energy credits ("SRECs") on the basis of size or interconnection status instead of price. Additionally, the proposal to procure SRECs from Illinois-based facilities is likewise illegal since the in-state preference for renewable resources expired on June 1, 2011.

This DG Solar proposal lacks sufficient detail to be approved by the Commission. Rather than including the necessary detail upfront about how the new procurement will be structured, conducted, and executed, the IPA proposes to finalize these critical details through workshops after the proposal is already approved. This is putting the proverbial cart before the horse and should not be permitted by the Commission. There is no reason to rush the approval of a specific DG Solar procurement before all options for the best outcome have been fully vetted. Notably. the solar preference that exists under the Act does not begin until June 2012 whereas the IPA has already procured solar RECs for 2012 and beyond through the 20-year long-term contracts discussed above. ICEA recognizes the policy and operational arguments in favor of distributed generation renewable

resources and is not opposed to holding workshops to discuss the potential benefits and possible plan for a future DG procurement. The existing proposal, however, should be denied because it is unnecessary, devoid of sufficient detail, and carries the potential for unreasonable costs.

IV. The IPA's Proposed Procurement Approach Deters Robust Retail Competition and Should be Modified

The current procurement approach for eligible customers creates a barrier to achieving full, sustainable competition by procuring too infrequently and relying too heavily on longer-term contracts that can create a "boom or bust" cycle for ARES and send incorrect price signals to consumers. The IPA's three-year laddered approach to procuring electricity relies on "point-in-time" pricing, which essentially guarantees that the default rate fails to reflect current wholesale market prices over the course of the procurement period.

At any given time, the default pricing may be significantly above current wholesale prices, which seemingly provides an opportunity for ARES to effectively compete by "beating" the default rate. That model is unsustainable, however, because at any other given point in time the default rate could be significantly lower than current wholesale prices, making it difficult for ARES to properly manage risk and encouraging consumers to return to utility service. Default pricing that is *continuously* reflective of current wholesale prices provides the best environment for sustainable, robust retail competition and correct market price signals for consumers.

Continued progress towards a robust competitive electric market best helps consumers balance price risk and budget certainty. Robust retail competition puts downward pressure on prices, offers a variety of product options for end-use customers, increases conservation incentives, and enhances customer service. As acknowledged by the IPA in its instant Plan, "recent developments indicate that significant reductions to the barriers to retail competition in residential markets are on the near-term horizon."[19] The IPA has also recognized that, in order to protect consumers and encourage residential retail competition, the IPA should procure power more frequently. For example, in its 2009 draft plan, the IPA recognized that "a single annual procurement event increases portfolio risk by relying on market timing . . . ."[20] In its Order approving the 2011 Procurement Plan, the Commission noted that the IPA believes eligible retail customers may benefit from more frequent procurements, and future plans may move towards a multiple or continuous procurement process.[21]

Given the recent positive developments in residential shopping and the IPA's repeated acknowledgement that more frequent procurements are better for consumers, there is simply no reason to continue with the current laddered procurement approach. Now is the time to increase the frequency of the procurements and shorten the contract

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[19] Plan at 9.

[20] Illinois Power Agency's Initial Power Procurement Plan to the Illinois Commerce Commission, at 2 (Oct. 20, 2008).

[21] See also Final Order, Docket No. 10-0563, at 102 (Ill. Comm. Comm'n Dec. 21, 2010) ("While its proposed optional incremental events may not be frequently used, the IPA believes eligible retail customers may benefit where more frequent procurements result in a lower price for energy. In the IPA's view, this option should also remain open should future procurement plans move towards a multiple or continuous procurement . . . .").

lengths to allow the default price to be more reflective of current market prices and enhance competition.

CONCLUSION

For the above stated reasons, ICEA respectfully requests that the Commission modify the Plan in response to the objections and comments contained herein.

Respectfully Submitted,

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