STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Power Agency	)	
	)	ICC Docket No. 14-0588
Petition for Approval of the 2015 IPA	)	
Procurement Plan Pursuant to Section 16-	)	
111.5(d)(4) of the Public Utilities Act	)	

REPLY BRIEF ON EXCEPTIONS ON BEHALF OF THE ILLINOIS POWER AGENCY

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VERIFIED REPLY BRIEF ON EXCEPTIONS
ON BEHALF OF THE ILLINOIS POWER AGENCY

The Illinois Power Agency ("IPA" or "Agency"), by and through its attorney, respectfully submits its Verified Reply Brief on Exceptions in Docket No. 14-0588, the IPA's petition for approval of its 2015 Procurement Plan ("Procurement Plan," "Plan," or "2015 Plan").

The IPA's Reply Brief on Exceptions addresses the following topics found in parties' Briefs on Exception ("BOEs"): 1) Full Requirements Procurement (ICEA/RESA); 2) Incremental Energy Efficiency Programs (NRDC/Staff); 3) SREC Procurement (AIC/ComEd); 4) Distributed Generation ("DG") Procurement (AIC/ComEd/Renewable Suppliers); 5) Competitive Clean Coal Procurement (Sargas); and 6) Pre-Bid Letter of Credit (AIC). These topics are addressed in the above-listed order below, and the failure to address any other topics or arguments raised on exceptions does not constitute the IPA's acquiescence to such positions.

I. FULL REQUIREMENTS PROCUREMENT

In its BOE, the IPA explained the value of a final determination on full requirements procurement:

> This issue has been repeatedly raised in objections to IPA procurement plans. Over the past two years, significant sums of the Agency's already-constrained resources have been expended researching, analyzing, and litigating full requirements procurement, potentially at the expense of other improvements to its procurement approach. Another year of intensive litigation accompanied by voluminous filings will produce enormous transaction costs, and will do so merely to better inform established and thoroughly communicated positions. This is not productive.

(IPA BOE at 3). The IPA is frustrated and disappointed, then, to see that ICEA's new "alternative" proposals presented "in the spirit of compromise" are 1) a pre-determination that rehearing is necessary for further litigation of this issue over the winter and spring, or 2) additional workshops so that the consideration of full requirements procurement will continue through the litigation of next year's procurement plan. (ICEA BOE at 11). To this end, the IPA's BOE states the following:

> The Agency thus seeks direction from the Commission that it does not seek consideration of the same (or substantially similar) arguments in future dockets. Absent compelling new arguments supported by quantified data on benefits to eligible retail customers, this issue should be considered closed and the Commission should not expect the IPA to provide further analysis beyond what the Agency chooses to conduct.

(IPA BOE at 3). That "alternatives" dragging this issue out for months and potentially years would be presented as a "compromise" underscores the need for finality. The IPA strongly recommends adoption of the proposed revisions presented on p. 4 of the Agency's BOE and that this issue be considered closed.

It is essential to remember that the purpose of this proceeding is to analyze and approve the annual Procurement Plan developed by the IPA. Through this process, the Commission considers the merits of objections presented by parties seeking to modify the Agency's Plan. The Commission properly framed this exercise when rejecting an earlier full requirements proposal by Constellation, stating that "it has not demonstrated that its proposal is superior to the IPA's, from the perspective eligible retail customers." (Docket No. 11-0660, Final Order dated December 21, 2011 at 182). Contrary to ICEA's arguments, this remains the correct framework: the IPA's Plan should only be modified due to the introduction of a "superior" alternative for eligible retail customers, and the burden of demonstrating the superiority of alternatives lies with parties making such proposals.

ICEA's original proposal and newly introduced "alternatives" clearly fail this test. In assessing ICEA's fixed-price full requirements procurement proposal, the Commission is faced with the following question: are the demonstrated benefits of full requirements procurement for eligible retail customers sufficient to justify the demonstrated expected increase in such customers' costs? As the Proposed Order rightfully noted, the record in this proceeding contains a more thorough (and less favorable) understanding of expected costs than in Docket No. 13-0546 due to new analyses of full requirements procurement from New Jersey and Pennsylvania. Outside of the IPA's inconclusive attempts to discern customer risk/volatility preferences, no new evidence has been presented as to benefits. Indeed, the only evidence presented by proponents of full requirements procurement is the September 2013 NorthBridge report—the very same report provided in last year's proceeding—which the Commission previously found was not "sufficient evidence" to justify modification of the IPA's procurement approach.[1] (Docket No. 13-0546, Final Order dated December 18, 2013 at 95). As explained by the IPA in its Response (pp. 2-17) and Reply (pp. 1-10) and as reflected in the Proposed Order, the evidentiary record in this year's proceeding weighs heavily in favor of finding that modifications to the IPA's procurement approach sought by ICEA and RESA are not justified.

With all other evidence against it, on exceptions ICEA seeks to inflate the importance of the September 2013 NorthBridge report—stating, for instance, that the Commission "clearly intended" that the NorthBridge report be "front and center" in this year's proceeding and that the Commission was requesting that parties "more fully analyze the NorthBridge report in the last

[1] On Exceptions, ICEA conflates critiques of the IPA's evidence with actual new evidence of its own. (ICEA BOE at 7-8). There is a meaningful distinction between actual new evidence, such as the analyses of cost premia in New Jersey and Pennsylvania provided in the 2015 Plan, and limited critiques of such analyses. While cited by ICEA as "significant analysis," minor critiques made in legal briefs do not constitute new evidence in support of a position. This distinction was observed by the Chief ALJ in finding that "[t]he information relied upon . . . as support for the ICEA proposal is the exact information relied upon in Docket No. 13-0546." (Proposed Order at 111). As this conclusion accurately encapsulates this proceeding's evidentiary record, it should be maintained in the Final Order.

docket." (ICEA BOE at 8, 11). This is incorrect, and such statements cannot be found in the Commission's Docket No. 13-0546 Final Order. By law, the Agency's 2015 Procurement Plan is the centerpiece of this litigation, and the purpose of this proceeding is to consider the IPA's Plan and objections to it. The NorthBridge report is one piece of evidence supporting a party's position on an issue in that litigation. As evidence, it is a stale report attached to a prior year's objection recycled without revision for objections to the IPA's 2015 Plan, and its merits must be understood through the lens of the extensive critiques provided by the IPA in this proceeding. (*See* IPA Response at 12-15). It is merely one data point among the many available to the Commission in understanding full requirements—one which cannot be sufficient evidence supporting modification of the IPA's procurement approach when viewed against the new, more robust, and more methodologically sound evidence demonstrating greater expected costs. The Proposed Order agrees, and ICEA and RESA's exceptions seeking adoption of fixed price full requirements procurement based on the September 2013 NorthBridge report must be rejected.

With the weight of evidence against them, proponents of full requirements procurement (all of whom happen to be retail suppliers or trade associations of retail suppliers who stand to benefit from increased customer switching due to a higher default supply rate) turn to a new strategy to effectuate changes to the IPA's procurement approach: scaling back their full requirements proposal and misleadingly labeling it a "pilot" program.[2] As explained in the IPA's Response (pp. 6-8), this proposal is not a "pilot." Instead, it calls for cutting the IPA's prompt year procurements into two halves and adopting an unjustified new procurement approach (full requirements) for one of them. This is not an experiment; it is a wholesale change to the Agency's well-established procurement approach. Given its scale, it is also a change that

[2] Notably, this proposal to simply reduce the amount of full requirements procurement from full-blown to partial is actually argued to be proponents' "primary new evidence" (RESA BOE at 2), further highlighting the absence of any actual new evidence supporting their position.

carries meaningful expected costs to eligible retail customers. As no benefits have been demonstrated to justify such costs, it must be rejected.

Nor is ICEA's partial full requirements proposal a "pilot" in other relevant, meaningful ways. As explained by the IPA in its Response:

> The proposed "pilot program"—or partial procurement—will apparently just attempt to quantify the price differences between the two procurement approaches in a vacuum. However, gleaning useful information may be a chore. The proposed pilot program fails to specify the methodology for comparing the effect(s) of the two procurement approaches. For example, there is no "treatment group" of customers receiving pricing based on fixed-price full requirements contracts, and no "control group" receiving pricing based on the IPA's normal purchase strategy. Every customer will still be subject to the PEA. More importantly, the proposed "pilot program" also studies the wrong policy question. Detailed information provided by the IPA and ICEA in both proceedings already extensively discusses the costs of full requirements. If anything needs to be studied further, it is the potential benefits of full requirements—yet this is unaddressed by the proposed "pilot."

(IPA Response at 7-8). Most notably, ICEA's proposed "pilot" would not seek to hold customers harmless for increases in expected costs, as has been done for other actual pilot programs approved by the Commission. (*See* IPA Response at 9-10, *citing* Docket No. 09-0263). Rather than a genuine attempt to gain new information, this "pilot" proposal is simply an effort to partially implement a more costly procurement approach that cannot reasonably be justified for full-scale implementation.

Unable to demonstrate concrete benefits in the record, ICEA and RESA now rationalize their proposal as an attempt to *find* benefits.[3] (ICEA BOE at 8-10; RESA BOE at 5). This is inappropriate, unsubstantiated, and wholly unauthorized under the law. The IPA's procurement approach must be expected to produce "the lowest costs over time, taking into account any

[3] "Benefits" sought to be evaluated are never actually defined by ICEA or RESA, nor is there any explanation of how "benefits" would be quantified and measured or what "data" would provide evidence of "benefits." This is a fundamental issue critical to understanding the merits of any "pilot," yet it has gone unanswered by full requirements proponents throughout this proceeding. Instead, on exceptions, ICEA and RESA just summarily allege that benefits would be found in "Illinois-specific data." (ICEA BOE at 9-10; RESA BOE at 3).

benefits of price stability." (20 ILCS 3855/1-20(a)(1)). That same standard governs the Commission's review. (220 ILCS 5/16-111.5(d)(4)). As ICEA and RESA seek to modify the IPA's procurement approach so as to increase expected costs, it is incumbent on these parties to demonstrate commensurate expected benefits *through the evidentiary record in this proceeding*, where this change would be approved. Not only have full requirements proponents failed to do so, they have arguably made no attempt.[4]

That proponents' new proposal is now framed as a "pilot" provides no crutch. Scaling back full requirements procurement to half of the prompt year's load for four full years, as ICEA and RESA propose, still constitutes a) a significant modification of the IPA's procurement approach and b) one which carries meaningful expected costs to eligible retail customers. As raising costs without demonstrating benefits cannot provide the "lowest total cost over time, taking into account any benefits of price stability," this proposal clearly fails to meet the standard governing the Commission's review and must be rejected.

II. INCREMENTAL ENERGY EFFICIENCY PROGRAMS

On exceptions, NRDC proposes that Ameren Illinois programs with TRC results between 0.9 and 1.0 may be summarily included in the IPA's approved Plan consistent with requested changes to total resource cost ("TRC") test review methodology. (NRDC BOE at 1, 7-8). The Agency disagrees that these programs can be included without a new TRC review.

Section 16-111.5B of the PUA requires that approved programs and measures "fully capture the potential for all achievable cost-effective savings." (220 ILCS 5/16-111.5B(a)(5) (emphasis added)). Section 16-111.5B further requires that the term "cost-effective" have "the

[4] While one could argue that demonstrating benefits in evidence may be challenging, this reasoning runs directly counter to ICEA and RESA's position that evidence of benefits *can* be found after four years of partially implementing full requirements. If evidence of benefits can be found through implementation in Illinois—a key pillar to ICEA and RESA's arguments—it must also be available from other jurisdictions to inform the record in this proceeding. Yet no such evidence of benefits has been presented.

meaning set forth in subsection (a) of Section 8-103 of this Act" (220 ILCS 5/16-111.5B(2)), which "means that the measures satisfy the total resource cost test." (220 ILCS 5/8-103(a)). Should the Commission approves changes in the TRC methodology employed for the review of programs under Section 16-111.5B, the IPA believes that the PUA requires that such programs must be reviewed for cost-effectiveness consistent with the approved TRC changes. Failure to do so would be inconsistent with Section 16-111.5B's requirement that programs and measures be "cost-effective" and could set a troubling precedent for future program approval. The IPA does believe that post-Order review and approval may be feasible, but implementation requires detailed procedural guidance from the Commission with a defined process and timeline for cost-effectiveness review and program approval.[5]

Staff takes a series of exceptions to the Incremental Energy Efficiency portion of the Proposed Order. (Staff BOE at 4-25). The IPA addresses select exceptions below, and either takes no position on or sees no issues with Staff's exceptions not addressed herein:

Staff Exception 2(b): The IPA disagrees with Staff that the proposed inclusion of DRIPE within a TRC analysis should be rejected as "inconsistent with the law and sound economic policy." (Staff BOE at 6-7). Given the competing analyses and approaches employed by various other states, the IPA believes that it is far from clear in the record that DRIPE is not a "societal benefit" fit for inclusion in a total resource cost analysis and opposes Staff's proposed language making this determination through this proceeding. A more prudent approach may be to leave this issue open for further analysis and review.

[5] This could perhaps be accomplished through a compliance filing after a re-review of programs consistent with any TRC methodology changes, or through a statement that after an agreed-upon review, any such programs passing the new TRC shall be considered approved. These solutions require clear guidance on exactly how effects such as DRIPE would be applied and the exact amount of Ameren's administrative cost adder reduction, and specific numerical adjustments proposed to TRC inputs would need to be articulated and approved by the Commission.

Staff Exception 2(h): Staff requests the inclusion of program "net benefits" for all proposed Section 16-111.5B programs in future years' plan filings. (Staff BOE at 12-14). The IPA finds Staff's argument somewhat confusing. First, Staff's stated rationale for including an additional column on "net benefits" appears to hinge on the role of this information in assisting the Commission with choosing between "duplicative" programs. However, the vast majority of programs are not "duplicative." For those that are, "duplicative" determinations are usually made between existing programs under Section 8-103 and a proposed program under Section 16-111.5B. In such cases, should a proposed Section 16-111.5B program be determined to be "duplicative" and not "competitive," it would not be recommended for approval and no comparison of program merits would be made (as the Section 8-103 program would have already been approved in a separate proceeding, and the proposed Section 16-111.5B program would be deemed "duplicative" and thus incompatible).

Second, as explained in the IPA's Response (p. 26), the IPA believes that a focus on "net benefits" may unnecessarily introduce confusion. Section 1-10 of the IPA Act provides that for the TRC, "[t]he benefit-cost ratio is the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures." (20 ILCS 3855/1-10 (emphasis added)). This is how cost-effectiveness is statutorily required to be understood, and thus how the IPA determines whether proposed programs and measures are "cost-effective" for inclusion in its Plan. (*See* 220 ILCS 5/16-111.5B(a)(4)). For the Commission, programs are either approved or rejected based on the whether included programs and measures "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 5/16-111.5(a)(5)). Low (or high) "net benefits" for individual programs may confuse what

is better understood as a binary determination of cost-effectiveness (and thus approval). While the IPA will happily accommodate the presentation of information in whatever manner best aids the Commission's analysis, "net benefits" are not the statutory basis for determining which incremental energy efficiency programs are ultimately approved by the Commission.

For the foregoing reasons, the IPA believes that Staff's exceptions and proposed revisions in Section 2(h) of its Brief on Exceptions should be rejected.

Staff Exception 4: Staff seeks adoption of its preferred Ameren Illinois behavioral program through selection of the Behavioral Energy Efficiency vendor, rather than the Home Energy Reports vendor recommended by both Ameren Illinois and the IPA. (Staff BOE at 17-20). As an initial matter, the IPA disagrees with Staff that the Proposed Order "does not specify which behavioral program is approved." (Staff BOE at 17) The Proposed Order "rejects Staff's proposed modifications to the Plan." (Proposed Order at 216). In so doing, it adopts the Plan's recommendation. Sufficient specification is made, and further modification is unnecessary.

Nor should the Proposed Order's conclusion be changed in light of Staff's arguments. Through its voluminous filings, arguments, and discovery requests, the IPA believes that Staff has made this issue unnecessarily complex. Indeed, the Proposed Order acknowledged as much, stating that Staff's recommendations and arguments (and, admittedly, portions of the IPA's responses) are "somewhat confusing." (Proposed Order at 216).

A brief summary: two third-party behavioral programs—both determined to be cost effective—have been proposed for Ameren Illinois. The IPA and Ameren Illinois believe these programs to be "duplicative."[6] The Proposed Order agrees. If the two programs are indeed "duplicative," a choice must be made as to which program to implement.

[6] ELPC also agreed with this determination, and with the IPA's recommended program for approval, in comments on the IPA's Draft Plan (See http://www.illinois.gov/ipa/Documents/ELPC-IPA-2015-Comments.pdf at 4-5).

Staff recommends that the Behavioral Energy Efficiency vendor's proposal be adopted. As set forth in the IPA's Response (pp. 25-29), the Agency disagrees, and believes that Staff reliance upon TRC differences manifest as "net benefits" (despite both programs meeting the TRC and thus being deemed cost-effective) is both inappropriate (as such differences are not contemplated as criteria in "duplicative" determinations based on the Commission's Order in Docket No. 13-0546) and flawed (as differences in TRC and/or net benefits are driven by vendor-supplied inputs). No other party supports Staff's proposal or recommendation. Alternatively, the IPA believes that the likelihood of program success—a criterion expressly contemplated in "duplicative" program determinations—is higher with the Home Energy Reports vendor's proposal, and its proposal should be adopted instead.

As the Proposed Order agrees, the IPA believes no changes are necessary or warranted to this portion of the Proposed Order and Staff's arguments should be rejected.

Staff Exception 5: Staff seeks express adoption of consensus language related to incremental energy efficiency programs. (Staff BOE at 21-25). The IPA made a similar request of the Commission in its Plan (*See* Plan at 74-78) and supports Staff's proposed revisions.

Staff Exception 6: Staff takes exception to the Proposed Order's failure to include an express approval of proposed energy efficiency programs. (Staff BOE at 25). The PUA provides as follows:

> Pursuant 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)). As this contemplates the approval of "programs and measures" beyond simply approval of the IPA's filed Plan, the IPA agrees with Staff that an express statement concerning the approval of programs and measures may be warranted.

III. SREC PROCUREMENT

Ameren Illinois and ComEd continue to oppose the IPA's proposed procurement of renewable energy credits from photovoltaic systems ("SRECs") using renewable resources budget funds. (AIC BOE at 5-8; ComEd BOE at 1-2). As explained by the IPA in its Response (pp. 35-38) and Reply (pp. 15-17), statutory "sub-target" goals require that procurements "shall" be made to "at least" a prescribed percentage. (20 ILCS 3855/1-75(c)(1)). These sub-targets operate within overall renewable energy resource targets that also prescribe a minimum ("at least")—and not a maximum, or capped—threshold amount. (*Id*.) The boundary constraining the Agency's ability to meet these sub-targets thus cannot be whether overall REC procurement minimums have been met. Instead, that boundary is Section 1-75(c)(2)(e)'s 2.015% rate impact cap, and the IPA does not propose exceeding this amount.

As satisfying overall REC targets does not absolve the IPA of its clear obligation ("shall") to meet statutory sub-targets using available funds, a procurement to meet sub-target goals is required. The Proposed Order agrees, and determines that the IPA's proposal is "clearly supported by the record and should be approved." (Proposed Order at 274). Parties opposing this proposal make no new arguments on exceptions, and these parties' requested changes eliminating the IPA's proposed SREC procurement should be rejected.

IV. DISTRIBUTED GENERATON PROCUREMENT

On exceptions, ComEd and Ameren Illinois continue to seek revisions to the IPA's proposed procurement of renewable energy resources from distributed generation ("DG") systems using utility-held hourly ACP funds. These revisions would require the IPA to procure for itself these resources in coordination with the Agency's supplemental photovoltaic

procurement under Section 1-56(i) of the IPA Act, and then contract with the utilities for the delivery of RECs. (ComEd BOE at 2-6; AIC BOE at 8-11).

The IPA, Staff, and ELPC oppose the AIC/ComEd proposal as inconsistent with the governing law. The IPA explained its opposition as follows in its Reply:

> The IPA cannot simply take funds and apply them as directed by the contractual terms of a transfer (as, say, a designated private agent could). The Agency's power, authority, and limitations are drawn from law, not from contract. Even assuming this transaction was possible, it is unclear whether the procurement itself could operate consistent with the law—both because such a procurement may not result in the utilities technically meeting DG procurement targets, as outlined in the IPA's Response, or because such a process may be inconsistent Section 1-75(c)(5)'s directive that hourly ACP funds be spent "on the purchase of renewable energy resources to be procured by the electric utility . . .," as outlined in ELPC's Response. (ELPC Response at 7). As the IPA is unsure whether it could be a party to such a transaction, unclear on whether it could spend the money as directed, and skeptical that any resulting procurement would operate consistent with the law, it cannot endorse this proposal.

(IPA Reply at 19). To reiterate—the IPA may not simply "conduct a procurement" pursuant to some abstract, unidentified authority, taking title to RECs for transfer and serving as a contractual conduit for the delivery of funds. The relevant question for the Agency is <u>not</u> what statutory provisions <u>prohibit</u> it from entering into binding contracts on another party's behalf, it is what provisions <u>allow</u> it.

The IPA may only expend monies in specific funds as appropriated each fiscal year by the General Assembly, and purchases made by the Agency are subject to the Illinois Procurement Code (30 ILCS 500) unless specifically exempted. Exemptions include the process used to select the Procurement Planning Consultant and the Procurement Administrator (20 ILCS 3855/1-25(2)) and for the use of the Renewable Energy Resources Fund. Regardless of the source of funds, if the IPA were to use the Illinois Power Agency Operations Fund for the expenditure of funds for this procurement, the Agency does not believe that it is allowable or

feasible to buy RECs using state-held funds and then transfer them to a third party under a procurement that is subject to the complex and onerous requirements of the Procurement Code.

While Section 1-56 of the IPA Act governing the use of the Renewable Energy Resources Fund does contain a procedural exemption for the purchase of renewable energy resources (20 ILCS 3855/1-56(f)), other provisions of Section 1-56 are limiting in ways that would make the proposal unfeasible. First, other than procurements pursuant to Section 1-56(i), there is a 75% wind carve out (20 ILCS 3855/1-56(b)) for the use of the Renewable Energy Resources Fund that could not be met via a DG procurement. Second, there may not be a utility procurement to be held in conjunction with this procurement nor "like resources" to use as a benchmark. (20 ILCS 3855/1-56(c) and (d)). And third, RECs procured using funds from the Renewable Energy Resources Fund must be permanently retired (20 ILCS 3855/1-56(e)), not transferred or resold to a third-party.

So while the approach suggested by Ameren Illinois and ComEd may be attractive due to abstract simplicity, it is actually the far more complicated proposal in operation. It introduces unjustified risk and uncertainty to pair with the additional administrative burdens associated with introducing a state agency as a new contractual counterparty. For the reasons set forth above and in the IPA's Response (pp. 44-45) and Reply (p. 19), this proposal must be rejected.

ComEd also seeks changes to the IPA's proposed methodology for selecting bids by proposing to use system size as selection criteria only after DG REC procurement targets have been met, relying on non-analogous past practice conducted under different statutory provisions as "precedent." (ComEd BOE at 3-6). As explained by the IPA in its Response (pp. 38-41), this approach may result in outcomes where no procurement from systems under 25 kW takes place and system size plays no role in a bid's selection. As ComEd's approach fails to properly

balance competing statutory considerations of system size and REC price, it is inappropriate for this procurement. The Proposed Order agrees, finding the IPA's proposal to be the "most reasonable" (Proposed Order at 276), and revisions to this conclusion should be rejected.

The Renewable Suppliers take three exceptions to the Proposed Order. Their second exception concerns at what date the balance of hourly customer ACP funds should be taken for determining the proposed DG procurement budget. Citing the Commission's budget determinations for the purchase of curtailed RECs from hourly ACP funds pursuant to its Order on Rehearing in Docket No. 13-0546, the Renewable Suppliers believe that date should be May 31, 2015. The IPA Act provides as follows:

> [T]he Agency shall increase its spending on the purchase of renewable energy resources to be procured by the electric utility for the next plan year by an amount equal to the amounts collected by the utility under the alternative compliance payment rate or rates in the prior year ending May 31.

(20 ILCS 3855/1-75(c)(5)). Upon review, the Agency believes that the phrase "prior year" used in this context could refer to either May 31, 2014, or May 31, 2015. The use of March forecasts for updating procurement volumes and budgets has become a feature of the IPA procurement process, and rolling forward the date of the determination of funds for the DG procurement budget would achieve a similar end (and would likely provide a larger budget for the procurement). Given the IPA's proposed September 2015 DG procurement schedule, either approach is workable for the Agency in practical terms. The IPA thus does not object to the Renewable Suppliers' proposal and can see its merits, but given the ambiguity in the law, takes no position as to which approach should be adopted.

V. COMPETITIVE CLEAN COAL PROCUREMENT

On exceptions, Sargas seeks the inclusion of a competitive clean coal procurement in part because "[t]he current 5-year procurement planning horizon contains no clean coal project or

procurement." (Sargas BOE at 2). This is incorrect, as the IPA's current procurement planning horizon features executed sourcing agreements with a retrofit clean coal facility as defined by Section 1-75(d)(5) of the IPA Act (FutureGen 2.0). Delivery of electricity under those agreements is scheduled to commence in 2017. To avoid such confusion, the Commission should consider an express statement that the IPA's 2015 Procurement Plan includes "electricity generated using clean coal" by virtue of existing contracts with the FutureGen 2.0 facility (as explained in ICEA's Response (p. 6) and the IPA's Reply (pp. 14-15)).

Sargas presents no new arguments on exceptions for its competitive clean coal procurement proposal, and its proposed language fails to draw any distinction between procurement on behalf of eligible retail customers and procurement binding alternative suppliers (which is prohibited absent express statutory authority to the contrary).[7] Further, its statement that the Proposed Order would "end the possibility of any future projects being considered under the clean coal portfolio statute as they are currently written" (Sargas BOE at 1) is also incorrect, as projects meeting other criteria may still proceed under provisions other than Section 1-75(d)(1). For reasons explained in its 2015 Procurement Plan (pp. 95-97) and Response (pp. 32-35), the IPA opposes this proposal and Sargas's exceptions should be rejected.

VI. PRE-BID LETTER OF CREDIT

Ameren Illinois proposes changes to develop a new section specifically addressing pre-bid letter of credit issues. (AIC BOE at 2-5). The IPA supports these changes and recommends their inclusion.

[7] While the First District Court of Appeals agreed that such authority exists for retrofit clean coal facilities (which Sargas is not, and does not claim to be) under Section 1-75(d)(5) of the IPA Act (*See* Commonwealth Edison Co. v. Illinois Commerce Commission, et al., 2014 IL App (1st) 130544, July 22, 2014, ¶ 25), the appellate court's decision is currently under review by the Supreme Court of Illinois. (*See* http://www.chicagobusiness.com/article/20141126/NEWS11/141129845/illinois-supreme-court-takes-up-futuregen-appeal). Additional uncertainty surrounding the presence of this authority in Section 1-75(d)(5) (which expressly contemplates consideration of sourcing agreements with ARES) further weakens of Sargas's already-thin arguments related to Section 1-75(d)(1) (which contains no such language).

CONCLUSION

The IPA respectfully recommends that the Commission resolve identified exceptions consistent with the IPA's positions articulated herein.

Dated: December 1, 2014

Respectfully submitted,

Illinois Power Agency

By:
__ /s/ Brian P. Granahan____

Brian P. Granahan
Chief Legal Counsel
Illinois Power Agency
160 N. LaSalle St., Suite C-504
Chicago, Illinois 60601
312-814-4635
Brian.Granahan@Illinois.gov

STATE OF ILLINOIS)
)
COUNTY OF COOK)

VERIFICATION

Anthony M. Star, being first duly sworn, on oath deposes and says that he is the Director for the Illinois Power Agency, that the above Verified Reply Brief on Exceptions on Behalf of the Illinois Power Agency has been prepared under his direction, he knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

OFFICIAL SEAL
SANJAY J PATEL
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/06/18

Anthony M. Star

Subscribed and sworn to me
This 1st day of December, 2014

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Power Agency	)	
	)	ICC Docket No. 14-0588
Petition for Approval of the 2015 IPA Procurement Plan Pursuant to Section 16-111.5(d)(4) of the Public Utilities Act	)	

NOTICE OF FILING

Please take notice that on December 1, 2014, the undersigned, an attorney, caused the Verified Reply Brief on Exceptions on Behalf of the Illinois Power Agency to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission in a new proceeding:

December 1, 2014

/s/ Brian P. Granahan___
Brian P. Granahan

CERTIFICATE OF SERVICE

I, Brian P. Granahan, an attorney, certify that copies of the foregoing document(s) were served upon the parties on the Illinois Commerce Commission's service list as reflected on eDocket via electronic delivery from 160 N. LaSalle Street, Suite C-504, Chicago, Illinois 60601 on December 1, 2014.

/s/ Brian P. Granahan___
Brian P. Granahan