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	**)**	

BRIEF ON EXCEPTIONS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

I. INTRODUCTION

The Retail Energy Supply Association ("RESA") is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than a regulated utility structure.[1] RESA is devoted to working with all stakeholders to promote vibrant and sustainable competitive retail energy markets for residential, commercial and industrial consumers.

In general, the Administrative Law Judge's Proposed Order ("ALJPO") is a reasoned disposition of the issues in this proceeding. In particular, RESA agrees with and supports the

[1] RESA's members include Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC); PPL EnergyPlus, LLC; Reliant; and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

ALJPO's findings that the procurement plan for renewable resources should be satisfied by the use of one-year renewable energy credits ("RECS") (ALJPO, p. 84) and that the 2012 Plan should not include a clean coal procurement. (*Id*., p. 55) However, RESA must except to two of the findings of the ALJPO on the subjects of market reflective pricing (*Id*., pp. 160-161) and acceleration of the procurement process. (*Id*., p. 163)

For the reasons set forth in this Brief on Exceptions, the ALJPO should be revised to: 1) provide for workshops to consider the replacement of the current three-year laddered approach for the procurement of energy supply, with a RESA proposal for market reflective pricing; and 2) urge the IPA to modify the timing of the procurement process in order to provide adequate notice of new prices to Retail Energy Suppliers ("RES").

II. THE ALJPO SHOULD BE REVISED TO PROVIDE FOR WORKSHOPS TO CONSIDER THE REPLACEMENT OF THE THREE-YEAR LADDERED APPROACH WITH MARKET REFLECTIVE PRICING.

On the subject of market reflective pricing, the ALJPO rejects the use of such pricing in the 2012 Plan:

> ICEA and RESA want the Commission and the IPA to reconsider the three-year laddered approach to procurement and develop an alternative that better reflects market prices. At a minimum, RESA wants the Commission to direct the IPA to undertake workshops to reconsider this issue. The AG, the IPA, AIC, and ComEd object to reconsidering the three-year laddered approach. Staff states that it does not necessarily oppose changing the procurement approach and provides an illustrative alternative to procurement.
>
> It appears to the Commission that there may some miscommunication or misunderstanding among various parties regarding this issue. While the Commission does not wish to revisit history, the Commission believes it is important to recall that the IPA Act and the IPA itself arguably grew out of the Illinois Auction processes approved in Docket Nos. 05-0159 through 05-0162. The existing procurement process has evolved since then.

> It is not clear that in this proceeding there is any basis for deviating from the three-year laddered approach adopted in the previous procurement proceedings. While ICEA and RESA seem to suggest a change is appropriate and Staff suggests it is theoretically possible, no party seems to go as to propose an alternative in this proceeding. For purposes of the 2012 Plan, the Commission concludes that the IPA's three-year laddered approach is reasonable and should be approved.
>
> As for RESA's request regarding workshops, the Commission believes that requiring workshops is not necessary at this point in time. All parties have significant obligations and limited resources. If RESA wishes to present a quantitative analysis supporting its position that an alternative to the three-year laddered approach is superior, the Commission might be willing to reconsider the issue in a future proceeding.

(*Id*., p. 160-161)

A. Contrary to the implication of the ALJPO, RESA is not proposing a return to the auction processes that were approved by the Commission in Docket Nos. 05-0159 through 05-0162.

The ALJPO, for some reason, indicates that it is "important to recall that the IPA Act itself arguably grew out of the Illinois Auction processes approved in Docket Nos. 05-0159 through 05-0162." (*Id*., p. 160). It is not clear why the ALJPO makes this reference, let alone consider it "important". If the implication is that the procurement plans submitted by the IPA and approved by the Commission have resulted in better pricing than the auction processes approved by the Commission in Docket Nos. 05-0159 through 05-0162, RESA would agree with that. However, that agreement is irrelevant because RESA is not proposing a return to those auction processes. RESA is proposing to make transitional steps toward more market reflective pricing, using a blend of quarterly, semi-annual, and annual procurements. RESA's proposal bears no resemblance whatsoever to the auction processes utilized in Illinois prior to the creation of the IPA.

B. Contrary to the ALJPO, the procurement process utilized by the IPA has not "evolved" with respect to market reflective pricing.

The ALJPO claims that the IPA's procurement process has "evolved" since the creation of the IPA. (*Id*.) While this claim may be true with respect to some aspects of the procurement process, it is incorrect with respect to the use of the three-year laddered approach. The IPA has used the same three-year laddered approach in its initial procurement plan (filed in Ill. C. C. Docket 08-0519) and in every plan since then, including the 2012 Plan filed in this proceeding, the IPA's fourth procurement plan submitted to the Commission.

The fact that the IPA has not "evolved" from the use of the three-year laddered approach is particularly bothersome since the IPA recommended a move toward multiple procurement events in its initial procurement plan in Ill. C. C. Docket 08-0519, stating that a move toward multiple procurement events would mitigate risks inherent in a single annual procurement event:

> Another method to achieve lowest total cost and price stability is to increase the frequency of procurement events. The IPA believes that a single annual procurement event increases portfolio risk by relying on market timing and by increasing the potential for bidders to exercise market power. To mitigate these risks, the IPA recommends more frequent and smaller volume entries into the market by transitioning to multiple procurement cycles and, eventually to a continuous procurement cycle. (Initial Plan, p. ii).

The IPA reiterated this position later in its initial plan:

> A single annual procurement increases risk to the Portfolio because price risk is minimized by more frequent and smaller volume entries into the market. Additionally, single annual procurements increase the potential for bidders to exercise some level of market power depending on market conditions.
>
> To mitigate these risks, the IPA recommends that procurement events occur more frequently than once per year. A likely method for managing such a schedule would be to migrate to multiple overlapping quarterly procurement cycles and eventually to implement a continuous procurement cycle. (*Id.*, p. 15)

However, despite that recommendation, the IPA's Initial Plan utilized a three-year laddered procurement approach with 35% of the projected energy needs procured two years in

advance of the year of delivery, 35% of the projected energy needs procured one year in advance of delivery, and 30% of the projected energy needs procured in the year of delivery.

For the fourth consecutive year, the 2012 Plan again proposes the same three-year laddered approach utilized in its first three procurement plans. (2012 Plan, pp. 22, 25) Moreover, the 2012 Plan does not even mention, let alone recommend, multiple procurement events as a means to mitigate the risks inherent in its one-time procurement event approach, despite the fact that this was an issue in Ill. C. C. Docket 10-0563, the proceeding considering the adoption of the previous IPA procurement plan. [2]

Thus, contrary to the implication of the ALJPO, the IPA's procurement plans have not "evolved" in at least one important respect. The IPA has made no movement toward market reflective pricing.

C. Contrary to the ALJPO, there is a basis for deviating from the three-year laddered approach in this proceeding.

The ALJPO claims that it is "not clear in this proceeding that there is any basis for deviating from the three-year laddered approach adopted in the previous procurement proceedings". (ALJPO, p. 160) This is incorrect. The ALJPO itself sets forth a good summary of the showings of RESA's verified comments, but then ignores them in its analysis of the issue.

The record in this proceeding shows that the Commission should direct the IPA to move toward market reflective pricing for the following reasons. Generally, utility default service procurement should result in market reflective price signals. Continued progress toward a competitive electric market is the best way to help all consumers balance price risk and budget certainty while also providing innovative and customer-driven value-added services. Successful

[2] In its final order in Docket 10-0563, the Commission noted that its Staff had offered to take the lead in developing the issue of multiple procurement events prior to the submission of the next procurement plan (the one being addressed in these comments). The Commission indicated that the parties were free to have discussions regarding this matter, but would not direct that they occur. (Order in Ill. C. C. Docket 10-0563, p. 106)

retail competition will produce downward pressure on price, offer a variety of product options for end use customers, increase conservation incentives, enhance customer service, improve environmental management and hasten the introduction of new, innovative products. Retail energy competition requires that default service pricing be properly structured; consumers must see a default price for electricity that reflects the actual market price of the electricity they consume. (RESA Objections, p. 4)

Specifically, the failure of long-term procurement contracts to reflect current wholesale market prices creates inefficiencies in either direction. In the event that the company's procurement costs are higher than those available in the wholesale market, then customers are harmed by having to pay higher than market prices. In the event that wholesale market prices rise above the locked in utility costs, customers will receive incorrect price signals that distort the market and give rise to the following unintended harmful consequences: 1) a belief that energy is less expensive than reality, leading to potential over-consumption; 2) discouraging energy efficiency investment by under-valuing avoided costs; and, 3) the risk of rate shock as those contracts end. In all of these instances, customers will be harmed. (*Id*., p. 5)

The use of mechanisms which would result in market reflective pricing would enable the procurement of shorter-term contracts which could be procured closer in time to actual delivery of the supply. The use of shorter term contracts procured closer in time to the date of delivery will enable customers to see a default price that better reflects prevailing market prices and will minimize long term contract hedging premiums that are associated with longer term contracts procured far in advance of delivery. Better price signals will spur more thoughtful efficiency investments, wise energy usage, and spur development of the competitive market. Better accuracy reduces customer costs over the long term. A major benefit of having default prices

reflect the market is that consumers who are on those default rates will be sent clearer price signals that, in turn, will cause more efficient energy usage. (*Id*.)

D. The ALJPO's implication of a possible willingness to consider a market reflective pricing proposal supported by a quantitative analysis, while rejecting workshops, is illusory.

The ALJPO rejects RESA's request for workshops as not being "necessary at this point in time." (ALJPO, p. 161) Apparently, the ALJPO finds that such workshops are not necessary because all of the parties "have significant obligations and limited resources". *Id*. However, the ALJPO invites RESA to submit a "quantitative analysis" demonstrating the superiority of market reflective pricing to the three-year laddered approach and indicates that if RESA does so, "the Commission might be willing to reconsider the issue in a future proceeding". (*Id*., emphasis added) RESA does not believe that this language is adequate, for the following reasons.

First, RESA hopes that if it submitted a quantitative analysis which supported its position that market reflective pricing is superior to the three-laddered approach, the Commission would reconsider the issue, not that it might be willing to do so.

Second, while RESA acknowledges that all of the parties have significant obligations and limited resources, this has not stopped the ALJPO from recommending workshops on other issues. The ALJPO accepts the IPA's proposal to hold workshops regarding distributed solar generation procurement. (ALJPO, p. 116) Market reflective pricing is just as important and deserves proper attention.

Third, the ALJPO's offer to RESA appears illusory. Presumably, the ALJPO is suggesting that RESA present its quantitative analysis in a future procurement plan proceeding. However, the tightness of the schedule in such proceedings is not conducive to the attention necessary to this important issue. For example, assuming that RESA wanted to submit a

proposal for market reflective pricing for the 2013 Plan, its first opportunity to present its proposal would be in commenting on the IPA's Draft Plan which would be submitted in August, 2012. However, based on past experience, RESA would not expect favorable treatment from the IPA and would not expect it to be reflected in the procurement plan submitted in September 2012, for Commission approval. Consequently, RESA's first real opportunity to present its proposal would be in its Objections to the IPA's filed procurement plan. Such Objections would be filed in October 2012. Given the fact that the ALJPO is requesting a quantitative analysis, RESA would have to request evidentiary hearings. However, under the IPA Act, the Commission would be required to enter its order by December 2012. Based on past experience, it is doubtful that the parties and, ultimately, the Commission would have to time to devote the necessary attention to resolve this matter in this short time frame.

RESA recommends that the Commission give it an opportunity to present its market reflective pricing and thereafter require the IPA and the Commission Staff to participate in workshops to address the proposal prior to the publication of the IPA's draft plan in August 2012. Of course, all interested parties would be welcome to participate in those workshops. Market reflective pricing can be accomplished in many ways and workshops would be the appropriate vehicle to address this matter.

E. Exception No. 1

For all of the above reasons, the ALJPO should be modified as follows:

> ICEA and RESA want the Commission and the IPA to reconsider the three-year laddered approach to procurement and develop an alternative that better reflects market prices. At a minimum, RESA wants the Commission to direct the IPA to undertake workshops to reconsider this issue. The AG, the IPA, AIC, and ComEd object to reconsidering the three-year laddered approach. Staff states that it does not necessarily oppose changing the procurement approach and provides an illustrative alternative to procurement.

~~It appears to the Commission that there may some miscommunication or misunderstanding among various parties regarding this issue. While the Commission does not wish to revisit history, the Commission believes it is important to recall that the IPA Act and the IPA itself arguably grew out of the Illinois Auction processes approved in Docket Nos. 05-0159 through 05-0162. The existing procurement process has evolved since then.~~

It is not clear that in this proceeding ~~there is~~ the record provides a sufficient ~~any~~ basis for deviating from the three-year laddered approach adopted in the previous procurement proceedings. While ICEA and RESA seem to suggest a change is appropriate and Staff suggests it is theoretically possible, no party ~~seems to go as to propose an~~has advanced a specific alternative that the Commission can adopt in this proceeding. For purposes of the 2012 Plan, the Commission concludes that the IPA's three-year laddered approach is reasonable and should be approved.

As for RESA's request regarding workshops, the Commission believes that requiring workshops is ~~not~~ necessary at this point in time. ~~All~~ While all parties have significant obligations and limited resources, RESA has made substantial showings that market reflective pricing would provide benefits to customers. However, since as previously stated, all parties have significant obligations and limited resources, RESA will have to take the lead in such workshops. Consequently, ~~If~~ if RESA ~~wishes to present~~ presents a specific proposal for market reflective pricing and a quantitative analysis supporting its position that an alternative to the three-year laddered approach is superior, the Commission ~~might be willing to reconsider the issue in a future proceeding.~~directs the IPA and the Commission Staff to commence workshops within one month of RESA's submission of its proposal and to conclude workshops in sufficient time to incorporate, if appropriate, market reflective pricing into the IPA's next procurement plan. Of course, all interested parties will be permitted to participate in such workshops.

III. THE ALJPO SHOULD BE REVISED TO REQUIRE SUFFICIENT NOTICE OF CHANGES IN RATES.

A. The provision of notice of changed rates has gotten progressively worse and requires direction from the Commission to the IPA.

In response to Constellation and RESA's recommendation that the procurement process be accelerated to allow the publication of new rates sufficiently in advance of their effective dates, the Commission found:

Constellation and RESA complain that that many of the 2011 procurements took place several weeks later than those same procurements in the past. Both request that the Commission Order establish a schedule that permits calculation of new rates sufficiently

> in advance of their effective date, and require that utilities file and make available approved tariffs and charges not less than two weeks before new rates go into effect.
>
> The IPA acknowledges the benefits of accelerating the procurement schedule, and notes that it will endeavor to accommodate an accelerated schedule; however, the IPA insists it must also abide by all statutory restrictions and requirements that may not always result in an advanced schedule. The IPA urges the Commission not to set deadlines that micromanage this process.
>
> The Commission is sympathetic to the issue raised by Constellation and RESA. The Commission, however, is mindful of the many responsibilities of the IPA and the difficulties it faces in fulfilling its legislative mandates. The Commission concludes that for purposes of the 2012 Plan, it will not adopt the recommendations of Constellation and RESA. The Commission cautions the IPA that in the future, if it is not willing or able to carry out its obligations in a timely manner, the Commission will, reluctantly, take steps to intervene; even if it requires setting deadlines which the IPA may view as micromanaging the process.

(ALJPO, p. 163)

The procurement process needs to be accelerated to allow the publication of new rates sufficiently in advance of their effective dates. Many of the 2011 procurements took place several weeks later than those same procurements in the past. In fact, they were the latest since the creation of the IPA in 2007. That timing contributed to approved utility tariffs regarding new rates being made available by Commonwealth Edison Company ("ComEd") only one day before those rates went into effect.

Delays in the release of utility tariffs and charges cause substantial confusion and competitive harm in the retail market. To the extent that procurements are to occur in the same year as the start of the new June-May cycle, the procurement events should be held in late February or early March. This will benefit suppliers and their customers. Future Commission orders approving the IPA Plans should establish schedules that permit calculation of new rates sufficiently in advance of their effective dates and require that utilities file and make available approved tariffs and charges no less than two weeks before the new rates would go into effect.

Sufficient notice is particularly given that there is now substantial activity in the mass market and the number of residential and small commercial customers being served by RESs is growing dramatically.

However, RESA appreciates both the IPA's concern about meeting its statutory obligations and the Commission's deference to that concern. In light of this and IPA's statement that it will endeavor to accelerate its process, RESA recommends that the Commission urge IPA to use its best efforts to conduct its procurement process in time to allow two weeks notice of the changed rates, which would become effective June 1, 2012. In addition, the Commission should make it clear to the IPA that if it does not conduct its procurement process in a manner which allows for such adequate notice, the Commission will establish a specific timetable in the next procurement plan, notwithstanding the IPA's complaints about micromanagement.

B. Exception No. 2

For all of the above reasons, the ALJPO should be modified as follows:

> Constellation and RESA complain that that many of the 2011 procurements took place several weeks later than those same procurements in the past. Both request that the Commission Order establish a schedule that permits calculation of new rates sufficiently in advance of their effective date, and require that utilities file and make available approved tariffs and charges not less than two weeks before new rates go into effect.
>
> The IPA acknowledges the benefits of accelerating the procurement schedule, and notes that it will endeavor to accommodate an accelerated schedule; however, the IPA insists it must also abide by all statutory restrictions and requirements that may not always result in an advanced schedule. The IPA urges the Commission not to set deadlines that micromanage this process.
>
> The Commission is sympathetic to the issue raised by Constellation and RESA. The Commission~~, however,~~ is also mindful of the many responsibilities of the IPA and the difficulties it faces in fulfilling its legislative mandates. ~~The Commission concludes that for purposes of the 2012 Plan, it will not adopt the recommendations of Constellation and RESA. The Commission cautions the IPA that in the future, if it is not willing or~~

~~able to carry out its obligations in a timely manner, the Commission will, reluctantly, take steps to intervene; even if it requires setting deadlines which the IPA may view as micromanaging the process.~~ However, the Commission notes that, as pointed out by Constellation and RESA, the timing of the IPA's procurement process has gotten worse and the notice provided of the new rates has gotten less and less. Moreover, given the development of the mass market in Illinois, the Commission believes it is particularly important that Retail Electric Suppliers receive sufficient notice of changed rates. Therefore, while the Commission will not micromanage the IPA by providing a timetable with specific deadlines for various components of the procurement process, the Commission will urge the IPA to use its best efforts to complete the procurement process in time for utilities to file and make available approved tariffs and charges not less than two weeks before new rates go into effect. If the IPA fails in this regard, the Commission will reluctantly set deadlines in the next procurement plan proceeding, even if the IPA views this as micromanaging the process.

IV. CONCLUSION

In conclusion, two modifications should be made to the ALJPO. First, the ALJPO should be revised in the manner set forth above to require workshops for consideration of market reflective pricing. Second, the ALJPO should be revised to urge the IPA to use its best efforts to conduct its procurement process in a manner which enables new rates to be made available to RESs no less than two weeks before they would go into effect.

Respectfully submitted,

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NOTICE OF FILING

Please take note that on December 1, 2011, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Brief on Exceptions of the Retail Energy Supply Association in this proceeding.

Dated: December 1, 2011

/s/GERARD T. FOX
Gerard T. Fox

CERTIFICATE OF SERVICE

I, Gerard T. Fox, certify that I caused to be served copies of the foregoing Brief on Exceptions of the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on December 1, 2011.

/s/ GERARD T. FOX
Gerard T. Fox