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	)	

REPLY OF THE RETAIL ENERGY SUPPLY ASSOCIATION TO RESPONSES TO OBJECTIONS

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, on October 18, 2011, filed a Response to Objections to the Illinois Power Agency's ("IPA") 2012 Power Procurement Plan, filed on September 28, 2011 in this proceeding (the "2012 Plan"). Responses were also filed by a number of other parties.

[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.

In this Reply to Responses to Objections, RESA will address the following three issues that were addressed in its Response, as well as in its Objections: 1) the Illinois Commerce Commission ("Commission") should direct the IPA and the Commission Staff to hold workshops with interested parties to discuss discontinuing use of a three-year laddered approach for the procurement of energy supply, and promote a more competitive marketplace by taking steps toward market reflective pricing; 2) the procurement plan for renewable resources should be satisfied by the use of one-year renewable energy credits ("RECS"); and 3) the IPA's proposal in the 2012 Plan to procure up to 250 MW of electricity generated by a clean coal facility through a long-term procurement should be eliminated.[2]

II. THE 2012 PLAN SHOULD BE REVISED TO INCORPORATE MARKET REFLECTIVE PRICING.

Four parties addressed the position of RESA and the Illinois Competitive Energy Association ("ICEA") that the IPA's current procurement approach—the use of a three-year ladder[3]—should be replaced with some form of market reflective pricing—the Office of the Attorney General (the "AG"), Commonwealth Edison Company ("ComEd"), the IPA, and the Commission Staff. RESA will respond to specific criticisms of its position, then provide, once again, a general explanation as to why market reflective pricing is superior to the IPA's current three-year laddered approach.

---

[2] No party responded to a fourth objection of RESA, which demonstrated the need to accelerate the procurement process. Nonetheless, this is a serious concern and the Commission should establish a schedule that permits calculation of the 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 the new rates go into effect. (see RESA's Response, p. 5)

[3] The 2012 Plan utilizes 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.

AG

The AG argues that RESA's and ICEA's position should be rejected, but that argument is based on a misunderstanding of that position. First, the AG misstates RESA's position to be that the three-year laddered approach should be replaced with a simple annual procurement. RESA is not advocating an annual procurement. RESA is advocating market reflective pricing, which could include multiple procurement events. Moreover, in addition to more frequent procurement events, there are other mechanisms that can be considered to make current default service more market reflective. For example, the current weighting[4] of the three-year blended contracts could be changed so that heavier weight is placed on the current energy year; or, rather than using three-year blended averages, shorter contract terms, such as 3, 6, and 12 month blended terms could be utilized. These mechanisms, and more, can be examined in the workshops advocated by RESA and, if appropriate, incorporated into the IPA's 2013 Procurement Plan.

Second, the AG claims that RESA and ICEA are suggesting that "customers should be disproportionately exposed to short-term wholesale prices". The use of the term "expose" implies that Illinois ratepayers only have default service as an option. That is clearly not the case-- there are opportunities for customers to shop for customized products and services from retail electricity suppliers.

Third, the AG implies that RESA and ICEA's objection to the three-year laddered approach is because it is "inconsistent with their business plans". RESA does not object to the three-year laddered approach because it is inconsistent with the business plans of its members.

---

[4] 35% of projected energy needs procured two years in advance of the year of delivery.
35% of projected energy needs procured one year in advance of delivery.
30% of projected energy needs procured in the year in which power is to be delivered.

RESA objects to the three-year laddered approach because it is an inferior method of procurement, as demonstrated below.

Finally, the AG faults RESA and ICEA for not demonstrating that the three-year laddered approach harms consumers or contradicts the IPA's statutory duty. (AG Response, pp. 4-6) While RESA is unable, after the fact, to demonstrate that the three-year laddered approach has resulted in increased prices to consumers because the data does not exist to make such a demonstration, RESA has shown, and will again show below, that the three-year laddered approach is not in the best interest of customers. With respect to the IPA's statutory duty, as discussed in RESA's reply to the IPA's Response, the IPA itself acknowledged in its first procurement plan that it should move toward market reflective pricing.

ComEd

ComEd argues that RESA's and ICEA's proposals to move away from the three-year laddered approach should be rejected based on the following. First, ComEd states that the IPA has performed a risk analysis demonstrating that the three-year laddered approach best satisfies the requirement of providing energy to customers at the lowest cost over time taking into account any benefits of price stability. However, that risk analysis does not demonstrate that the three-year laddered approach is superior to a market reflective approach, particularly from a cost standpoint.

Second, ComEd claims that more frequent procurement events and shorter contract durations will move toward spot market pricing, which, according to ComEd, conflicts with the Public Utilities Act's directive to seek price stability, as well as low cost. RESA's response is that its proposal for market reflective pricing is a long way from advocating that spot market pricing be utilized in the IPA's procurement plan. Although it is not advocating it here, RESA

does note that in other jurisdictions, spot market pricing is used as a small component of a blended default service rate offered to small customers.

Third, ComEd suggests that RESA's and ICEA's proposals are based on a claim that they cannot compete for customers and that this is refuted by the fact that ComEd's eligible retail customer base is "shrinking rapidly" due to customers switching to Retail Electric Suppliers. (ComEd Response, pp. 23-24) RESA has never claimed that the three-year laddered approach prevents its members from competing for customers. RESA advocates in favor of market reflective pricing to the benefit of consumers, as explained below.

IPA

The IPA also opposes RESA's and ICEA's proposals to move away from its three-year laddered approach. According to the IPA, it is unclear that the costs of additional procurements would be outweighed by the benefits of holding these events. (IPA Response, p. 24) However, because the IPA has not investigated multiple procurement events, despite indicating in its initial procurement plan, that it would do so, it is equally true that it is unclear that the benefits of additional procurements would be outweighed by the cost of holding these events.

In Ill. C. C. Docket 08-0519, the IPA's initial procurement plan, the IPA stated 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)

All RESA is requesting is that the Commission order workshops to investigate the use of market reflective pricing. During those workshops, the benefits and costs of proposals to implement such pricing can be examined.

Commission Staff

The Commission Staff disagrees with the proposals of RESA and ICEA for market reflective pricing, claiming that these proposals would be too costly to implement with the IPA procurement process and would unduly increase risk to ratepayers without a reasonable expectation of savings. RESA is not aware of any evidence of what the cost of additional procurement events would be, let alone that they would be "too costly to implement" Moreover, RESA is not aware of any evidence that a move toward market reflective pricing would either increase risk to ratepayers, or describe what type of risk that might be. RESA notes that the quote cited above from the IPA's first procurement plan correctly identifies the increased price risk consumers face with a single procurement event – a risk that can be avoided by holding more frequent procurements.

However, the Commission Staff indicated that, if the Commission agreed with RESA and ICEA that greater market reflective pricing would be beneficial, the Commission Staff would not oppose a "modest reduction" in the 2012 Plan's hedge ratios. The Commission Staff offered,

for illustrative purposes, a table showing an alternative plan that would reflect such modest reductions. (Staff Response, pp. 10-11) Certainly, this is a plan that could be reviewed during the workshops requested by RESA.

The Benefits of Market Reflective Pricing

Contrary to the claims of parties wanting to perpetuate the three-year laddered approach, RESA advocates a move toward market reflective pricing because it has benefits to all of the stakeholders in the competitive marketplace, including consumers. The IPA should move toward multiple procurement cycles for the following reasons. 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 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; that is, consumers must see a default price for electricity that reflects the cost of the electricity they consume.

The failure of long-term procurement contracts to reflect the cost of electricity consumed creates inefficiencies. In the event that the IPA procurement costs are higher than those available in the wholesale market, then default service customers are harmed by having to pay higher energy costs than current 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.

The use of more frequent procurement events 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.

Under the IPA's current three-year laddered approach, the time period between procurement and delivery of energy is too great. RESA's recommendation to investigate the benefits of market reflective pricing would result in better alternatives that would achieve the significant benefits described above. The Commission should direct the IPA to hold workshops to consider the benefits of moving toward market reflective pricing in the IPA's next procurement plan.

III. THE RENEWABLE ENERGY RESOURCES REQUIREMENT SHOULD BE MET THROUGH THE USE OF ONE-YEAR RENEWABLE ENERGY CREDITS.

After reviewing the Objections of the parties and giving them "careful consideration", the IPA stated that it has decided to remove the proposal for the procurement of long-term renewable

energy credits ("RECS") from the 2012 Plan. However, this issue will be revisited in future procurements. (IPA Response, pp. 2-5) RESA applauds the IPA's decision. The Objections of electric utilities, RESs, electric generation companies, and the Commission Staff overwhelming demonstrated that use of one-year RECs continues to be the best way of meeting the requirements of the IPA Act. The utilization of one-year RECs for the 2012 Plan will result in a low-cost supply of renewable energy resources and will allow time to assess the impact of municipal aggregation and increased competition for residential customers on the level of migration from the Illinois electric utilities. The issue of medium and long term procurement of renewable energy resources can be better addressed in the 2013 power procurement plan after another year of experience.

Wind on the Wires ("WOW") claims that the uncertainty of future electric utility load does not warrant the procurement of one-year RECs. WOW asserts that the IPA should still procure multi-year RECS because some of those multi-year REC contracts can also be cancelled depending upon the amount of load migration. (WOW Response, pp. 1-2) However, the IPA's approach of procuring one-year RECs, which are plentiful and inexpensive, for the 2012 Plan and deferring the issue of multi-year RECs until future plans when there has been more experience with load migration makes much more sense than entering into long-term REC contracts only to cancel them later.

IV. THE CLEAN COAL PROCUREMENT SHOULD BE ELIMINATED FROM THE 2012 PLAN.

In its Response to Objections, the IPA, while disagreeing that it lacked the authority to include a clean coal procurement in the 2012 Plan, nevertheless, decided to remove it from the

2012 Plan. The IPA noted, however, that it would consider it in future procurement plans. (IPA Response, pp. 5-8) RESA agrees that the IPA has made an appropriate decision.

Only FutureGen Industrial Alliance, Inc. ("FutureGen") continues to support the 2012 Plan's inclusion of a clean coal requirement. (FutureGen Response, pp. 1-11) While FutureGen's position is understandable from the perspective of a company that desires to be the initial clean coal facility, RESA agrees with the IPA that it is best to defer this issue until a future plan and that it makes sense for the IPA to work through clean coal procurement issues with interested Parties via a workshop process "when the time is appropriate". (IPA Response, p. 8)

V. CONCLUSION

In conclusion, four modifications should be made to the 2012 Plan. First, the Commission should revise the Plan to direct the IPA, the Commission Staff and other interested parties to engage in workshops to consider the use of market reflective pricing in next year's IPA procurement plan. Second, the Commission should accept the IPA's decision to modify the 2012 Plan to utilize solely one-year RECs to meet the renewable energy resource requirements. Third, the Commission should accept the IPA's decision to eliminate the clean coal procurement from the 2012 Plan. Fourth, there should be specific timetables in the plan that ensure that new rates will be available to RESs no less than two weeks before they would go into effect.

Respectfully submitted,

/S/ GERARD T. FOX
Gerard T. Fox
An Attorney for the Retail Energy Supply Association

Law Offices of Gerard T. Fox
Two Prudential Plaza
180 North Stetson, Suite 3500
Chicago, IL 60601

(312) 909-5583
gerardtfox@aol.com

October 28, 2011

STATE OF ILLINOIS)
) **SS**
COUNTY OF DUPAGE)

VERIFICATION

Roy Boston, being first duly sworn, on oath deposes and says that he is the Strategic Planning & Policy Manager—East, for Noble Americas Energy Solutions, that he has read the foregoing Reply to Responses to Objections, that he knows of the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

OFFICIAL SEAL
GINA L BATTAGLIA
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 6/15/2013

/s/ROY BOSTON
Roy Boston

Subscribed and sworn to me

This 28th day of October, 2011

NOTICE OF FILING

Please take note that on October 28, 2011, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Reply of the Retail Energy Supply Association to Responses to Objections in this proceeding, Ill. C. C. Docket 11-0660.

Dated: October 28, 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 Reply of the Retail Energy Supply Association to Responses to Objections, upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for Ill. C. C. Docket 11-0660 via electronic delivery on October 28, 2011.

/s/ GERARD T. FOX
Gerard T. Fox