**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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| **ILLINOIS POWER AGENCY** | **)** | |
| **Petition for Approval of the** | **)** | **Docket No. 13-0546** |
| **220 ILCS 5/16-111/5(d) Procurement Plan** | **)** | |

# THE RETAIL ENERGY SUPPLY ASSOCIATION
# BRIEF ON EXCEPTIONS

## I. INTRODUCTION

The Retail Energy Supply Association ("RESA")[1] submits, pursuant to 83 Ill. Admin. Code Section 200.830 of the Rules of Practice of the Illinois Commerce Commission ("Commission") and the Administrative Law Judge's ("ALJ") Ruling, this Brief on Exceptions to the ALJ's Proposed Order ("ALJPO") in this proceeding concerning the Illinois Power Agency's ("IPA") 2014 procurement plan (the "2014 Procurement Plan"). 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. RESA is devoted to working with all stakeholders to promote vibrant and sustainable

[1] RESA's members include AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; 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.

competitive retail energy markets for residential, commercial and industrial consumers. RESA has been an active participant in all of the proceedings before the Illinois Commerce Commission ("Commission") concerning approval of the annual procurement plans of the IPA, beginning with Ill. C. C. Docket 08-0519.

RESA has three exceptions to the ALJPO. For the reasons provided herein and in the record of this proceeding, the ALJPO should be revised as follows in order to improve the 2014 Procurement Plan. First, provision should be made for the use of fixed-price full requirements products, as proposed by the Illinois Competitive Energy Association (" ICEA"). Second, any change in assumptions which would impact the calculation of ACPs should made public as soon as possible. Third, the IPA should be encouraged to plan and execute its procurement process to ensure that new rates will be available no less than two weeks before they would go into effect.

## II. EXCEPTION 1: FULL REQUIREMENTS PRODUCTS

RESA supports and endorses ICEA's Brief on Exceptions being filed today in this proceeding. In its Brief on Exceptions, ICEA demonstrates that the time is right for the Commission to incorporate a full requirements product for Commonwealth Edison Company into the 2014 Procurement Plan and that the arguments against the inclusion of such a product are without merit. ICEA offers specific language revisions to the ALJPO to reach this result and RESA supports those language revisions and requests that the Commission make those revisions to the ALJPO.

## III. EXCEPTION 2: ALTERNATIVE COMPLIANCE PAYMENTS

During the proceeding, RESA raised concerns regarding the calculation of the Alternative Compliance Payment ("ACP").[2] In particular, RESA pointed out that there was a substantial increase in the Estimated ACP, as a result of a changed assumption, 11 ½ months in the compliance period, leaving Alternative Retail Suppliers no ability to recover that increase from customers. (RESA Objections, pp. 8-9) However, the ALJPO accepts the position of the IPA and Commission Staff that this matter is outside the scope of this proceeding. (ALJPO, p. 153) RESA would be more understanding of this position if either the IPA or the Commission Staff could point to another forum in which to address the problem caused by last minute changed assumptions resulting in increased Estimated ACPs. In the absence of another forum, and given the fact that the ACP is based on the renewable procurements that the IPA manages on behalf of the utilities, this proceeding is an appropriate forum to address concerns regarding the ACP. Also, contrary to the implication of the ALJPO, the increase in the Estimated ACP was not the result of a procurement event; again it was a changed assumption, because the original assumption was incorrect. Moreover, it is unclear as to when the Commission Staff or the IPA knew that the original assumption was determined to be incorrect.

Changing the Estimated ACP during the course of a compliance year significantly, and negatively, impacts the ability of RESs to correctly reflect the cost of complying with renewable portfolio standards. The purpose of the Estimated ACP, which is made available shortly after the IPA conducts its procurement events in April before the beginning of the planning year, is to give RESs an indication as to what the Actual ACP will be after the close of the compliance year. The Estimated ACP is typically a component of RES product pricing that is charged to customers during the course of the compliance year, and changes in that number render RESs'

[2] Exelon and ICEA also had concerns similar to RESA's regarding the ACP posting process. (Exelon Objections, pp. 9-10; ICEA Reply to Objections, pp. 6-7)

charges to customers inaccurate. The only thing that would typically cause a change to the Estimated ACP number is if the IPA holds additional procurement events. However, when the Commission changes the Estimated ACP during the compliance year, without there being a notice that a change was coming (as would be the case if additional procurements events were held), it renders RES charges to customers inaccurate. Thus, the current ACP approach adds an additional regulatory calculation change component that cannot be historically anticipated, forecast or hedged. The solution to this is to require that all changes in how the Estimated ACP is calculated must occur only to subsequent compliance years, so that such changes will be accurately reflected in customer charges.

At a minimum, RESA requests that the ALJPO be modified to encourage the IPA to notify the Commission Staff promptly when there is a changed assumption in the calculation of the ACP and the Commission Staff to publish the revised estimated ACPs, resulting from that changed assumption as soon as possible. To accomplish this, the ALJPO should be revised as follows. Delete the first full paragraph on page 153 of the ALJPO and substitute the following:

> The Commission has reviewed the arguments of the parties and declines to accept the proposals of RESA, Exelon and ICEA. However, the Commission acknowledges that these parties raise a legitimate concern and encourages the IPA to notify the Commission Staff promptly when there is a changed assumption in the calculation of the ACP. Likewise, the Commission directs the Commission Staff to published revised estimated ACPs, resulting from such a changed assumption, as soon as possible.

## IV. EXCEPTION 3: NOTICE OF NEW DEFAULT RATES

During the proceeding, RESA took the position that the Commission should, in its order in this proceeding, 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.[3] (RESA Objections, pp. 9-10) Delays in the release of utility tariffs and charges cause substantial confusion and competitive harm in the retail market. While the IPA included some improvements in the procurement process in the 2014 Procurement Plan, it did not commit to accelerating the publication of new rates in advance of their effective dates.

The ALJPO states that while it appreciates the concerns of RESA and other parties regarding publication of new rates, it declines to "micromanage" the procurement process of the IPA. Instead, the ALJPO encourages the IPA, the Commission Staff, the Procurement Administrator, and the Procurement Manager to take these concerns into consideration when planning and executing the procurement process. (ALJPO, p. 198).

RESA appreciates the encouragement the ALJPO would give to the IPA to take RESA's concerns into consideration, but believes the encouragement should be stronger. Therefore, RESA recommends that the first paragraph on page 198 of the ALJPO be revised as follows:

> The Commission appreciates the concerns and suggestions of Exelon, RESA, and ICEA. The Commission, however, is not inclined to micromanage the procurement process which the IPA has effectively administered in previous years. As a result, the Commission will not adopt the recommendations of Exelon, RESA, and ICEA. The Commission does encourage the IPA, Staff, the Procurement Administrator, and Procurement Manager to take these concerns into consideration when planning and executing the procurement process and specifically encourages them to plan and execute the procurement process in a manner which enables the electric utilities to file their revised rates no less than two weeks before their effective dates.

## V. CONCLUSION

Three modifications should be made to the ALJPO to improve the 2014 Procurement Plan. First, provision should be made for the use of fixed-price full requirements products, as

[3] Exelon and ICEA took the position that new rates should be published a month in advance of their effective dates. (Exelon Objections, pp. 13-14; ICEA Reply to Objections, p. 7)

proposed by ICEA. Second, any change in assumptions which would impact the calculation of ACPs should be made public as soon as possible. Third, the IPA should be encouraged to plan and execute its procurement process to ensure that new rates will be available 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 November 21, 2013 I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Retail Energy Supply Association's Brief on Exceptions in this proceeding.

Dated: November 21, 2013

/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 Retail Energy Supply Association's Brief on Exceptions upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on November 21, 2013.

/s/ Gerard T. Fox
Gerard T. Fox