**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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| **ILLINOIS POWER AGENCY** | ) | |
| **Petition for Approval of the** | ) | **Docket No. 14-0588** |
| **220 ILCS 5/16-111/5(d) Procurement Plan** | ) | |

# THE RETAIL ENERGY SUPPLY ASSOCIATION VERIFIED REPLY TO RESPONSES TO OBJECTIONS TO ILLINOIS POWER AGENCY'S 2015 PROCUREMENT PLAN

## I. INTRODUCTION

The Retail Energy Supply Association ("RESA")[1] 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 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 Illinois Power Agency ("IPA"), beginning with Ill. C. C. Docket 08-0519.

[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.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. d/b/a IGS Energy; 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.

RESA submitted Comments to the IPA on its Draft 2015 Power Procurement Plan, dated August 15, 2014 (the "2015 Draft Plan"). On October 6, 2014, RESA filed Objections to the IPA's 2015 Power Procurement Plan (the "2015 Plan") filed with the Commission on September 29, 2014, and docketed as Ill. C. C. Docket 14-0588. On October 21, 2014, RESA filed its Response to Objections to the 2015 Plan.

A number of other parties also submitted Responses to Objections to the 2015 Plan regarding a large number of issues. RESA will only address two issues in this Reply.

First, for the reasons stated in its Comments on the 2015 Draft Plan, its Responses to Objections to the 2015 Plan, and its Objections to the 2015 Plan, RESA supports the proposal of the Illinois Competitive Energy Association ("ICEA") to incorporate a four-year pilot program for fixed-priced, full requirements ("FPFR") products into the 2015 Plan. In addition to ICEA and RESA, Exelon Generation ("ExGen") supported ICEA's proposal in its Response to Objections. In addition, the Commission Staff addressed ICEA's proposal, but, at least at the present time, is neutral on that proposal. The following parties filed Responses to Objections opposing the incorporation of FPFR products into the 2015 Plan: the Attorney General and the IPA. In this Reply, RESA will address the Responses to Objections of ICEA, ExGen, the Commission Staff, the Attorney General and the IPA regarding FPFR products, in general, and ICEA's proposed pilot program, in particular.

Second, the following parties, in addition to RESA, filed Responses opposing the proposal of Sargas, Inc. ("Sargas") that the IPA should conduct a clean coal procurement as part of the 2015 Plan: Ameren Illinois Company ("AIC"), Commonwealth Edison Company ("ComEd"), the Commission Staff, ICEA and the IPA. In this Reply, RESA will address the Responses of these parties regarding Sargas' proposal.

## II. THE COMMISSION SHOULD APPROVE THE INCLUSION OF ICEA'S PROPOSED FOUR-YEAR PILOT PROGRAM FOR FIXED-PRICE, FULL REQUIREMENTS PRODUCTS IN THE IPA'S 2015 PROCUREMENT PLAN.

### A. RESPONSE TO ICEA

ICEA continues to support the incorporation of FPFR products into the 2015 Plan, specifically in the form of ICEA's proposed four-year pilot program for ComEd's service territory ("ICEA Pilot Program"). RESA supports ICEA's Pilot Program as that pilot program would allow the comparison of the performance of the IPA's block-and-spot approach, which the IPA has utilized since its first procurement plan filed in 2008, against actual IPA-run FPFR procurements. In short, the ICEA Pilot Program would allow the comparison based on a review of Illinois-specific data. RESA supports the ICEA Pilot Program because without such a program, all of the arguments of the IPA and other parties opposing the program are based on speculation, not real results.

### B. RESPONSE TO EXGEN

ExGen continues to support the inclusion of the ICEA Pilot Program in the 2015 Plan. In its Response, ExGen makes the observation, with which RESA strongly agrees, that the fact that the benefits of price stability has not been fully explored in Illinois is not a reason to reject the ICEA Pilot Program. On the contrary, it is precisely the reason that the Commission should adopt the ICEA Pilot Program. (ExGen Response, pp. 1-3)

### C. RESPONSE TO COMMISSION STAFF

The Commission Staff neither supports nor opposes the ICEA Pilot Program, stating that the issues regarding the program have been thoroughly discussed and are ready to be addressed by the Commission. However, the Commission Staff states that it disagrees with one of the

arguments made by the Citizens Utility Board ("CUB") against the ICEA Pilot Program—that a pilot program won't, in its own right, provide price stability for Illinois consumers. The Commission Staff states that CUB's criticism overlooks the value of conducting a pilot program, namely providing a side-by-side comparison between the bidding results of a FRPR procurement and the IPA's block-and-spot procurement, conducted nearly simultaneously and for the same delivery periods. According to Staff, such "experiments would provide additional relevant data on the relative cost of the two procurement approaches". (Staff Response, p. 3)

RESA agrees with the Commission Staff on this point. The purpose of the ICEA Pilot Program is to provide actual data which would allow an apples-to-apples comparison of FPFR products with the IPA's block-and-spot approach. RESA also notes that in addition to cost considerations, such a comparison would also allow an evaluation of the benefits derived from these two product procurements. Again, absent that pilot and that comparison, the IPA is rejecting, out-of-hand, a potential superior alternative to the block-and-spot approach.

D. RESPONSE TO THE ATTORNEY GENERAL

The Attorney General supports the exclusion of the ICEA Pilot Program from the 2015 Plan. The Attorney General advances five arguments in support of its position, none of which justifies the exclusion of the ICEA Pilot Program.

First, the Attorney General admits that its first argument is in response to an position that neither ICEA nor any other party supporting the ICEA Pilot Program made with respect to the 2015 Plan—the impact of the electric utilities Purchased Energy Adjustments ("PEA") on the ability to achieve an accurate Price-to-Compare. (AG Response, p. 3) RESA is unsure why the Attorney General raises an argument that is supported by no party to these proceedings, and therefore may not be relevant to the issues at hand. If this is a relevant argument, then it also

raises the question whether a block-and-spot product similarly impacts utilities' PEAs and the ability to achieve a meaningful Price-To-Compare. RESA does agree with the Attorney General on this point—this was not an argument made in support of the ICEA Pilot Program.

Second, the Attorney General argues that the Commission should not adopt the ICEA Pilot Program because of potential changes in the energy supply market due to the United States Environmental Protection Agency's draft rules regarding carbon emissions. (*Id.*, pp. 3-4) RESA observes that the potential impact of these draft carbon emissions rules could possibly be greater in circumstances where the IPA procures only one product type that buys blocks at only one point in time and fills in with monthly spot purchases. In short, the ICEA Pilot Program could prove to provide greater price stability than the current block-and-spot product during times of increased price volatility. Frankly, RESA does not see any negative impact of those draft rules on the merit and benefit of the ICEA Pilot Program.

Third, the Attorney General argues that proponents of FPFR products ignore the value of utilizing multiple procurement strategies and preserving options for customers. (*Id.*, pp. 4-5) The Attorney General misses the point. The ICEA Pilot Program will not replace the IPA's traditional procurement of block-and-spot purchases; the two will co-exist for comparison purposes. The two will operate side-by-side in order to determine which approach is superior for customers from both cost, and benefit, perspectives.

Fourth, the Attorney General argues that the IPA has successfully exercised flexibility and discretion in managing its procurement. (*Id.*, pp. 5-6) In response, RESA does not see the ICEA Pilot Program as an attack on the IPA. As previously stated, the purpose of the ICEA Pilot Program is to provide a comparison, currently lacking, of the results of largely simultaneous procurements of FPFR products and block-and-spot purchases.

Fifth, the Attorney General argues the Commission should resist the argument that there is only one "best" way to obtain electric supply. (*Id.*, pp. 6-7) RESA has two responses to this argument. First, RESA is not sure who is making such an argument; certainly RESA, in its comments, has never argued that there is only one best way to obtain electric supply. Second, since the IPA, ever since the first procurement in 2008, has only procured one type of electric supply product, the Attorney General's argument goes against those who would preclude the IPA from exploring other product types, like the FPFR product suggested by ICEA's Pilot Program. However, once again, the ICEA Pilot Program would not supplant the IPA's block-and-spot approach. Rather, the two procurement approaches would operate at the same time in order to provide a meaningful comparison.

## E. RESPONSE TO THE IPA

The IPA disagrees with the inclusion of the ICEA Pilot Program in the 2015 Plan. In support of its position, the IPA makes the following arguments.

First, the IPA argues that its current procurement approach produces the lowest total cost over time, taking into account any benefits of price stability. (IPA Response, pp. 3-6) RESA respectfully submits that this is an opinion, not a fact. Certainly it is not an opinion based on experience gained through a comparison of two product procurements conducted at the same time which is what RESA urges the Commission to approve. Absent conducting the ICEA Pilot Program, it will remain an opinion based on subjective analysis, not on facts.

Second, the IPA argues that the ICEA Pilot Program is not really a pilot program at all, rather it is a partial implementation of full requirements. (*Id.*, pp. 6-8) RESA will leave it to

ICEA to defend the parameters of its proposal; however, in RESA's opinion, the proportion of the FPFR procurement to the total procurement appears reasonable. As a fallback position, the IPA states that if the Commission orders the implementation of a FPFR pilot program, the IPA has a number of recommendations regarding the timing of such a pilot program, the development of appropriate research and evaluation, consideration of a "hold harmless" provision, expansion of the pilot to AIC's service territory, and determination of the appropriate size of the pilot. (*Id.*, pp. 8-10) Again, RESA will defer to ICEA regarding potential modifications to its proposed pilot program.

Third, the IPA argues that is has fully complied with the Commission's directive in its order in Docket No.13-0546 to include a more thorough and accurate analysis of the impacts of incorporating FPFR products into its procurement strategy. (*Id.*, pp. 11-12) On the contrary, RESA believes that its Objections (pp.3-4), and the Objections of ICEA (pp. 12-15) and ExGen (pp. 3-5) demonstrate that the IPA has not provided the thorough and accurate analysis demanded by the Commission in its Order in Docket No.13-0546.

Fourth, the IPA offered "several criticisms" of the NorthBridge Report, sponsored by ICEA in Docket 13-0456 and attached to its Objections in this proceeding, noting that it "withheld" raising those criticisms last year. RESA will leave it to ICEA to support the NorthBridge Report against the IPA's belated criticisms since ICEA sponsored the report. However, RESA points out that not only did the IPA "withhold" its criticisms of the NorthBridge Report last year, presumably in Docket 13-0546 (despite the fact that it had an opportunity to raise them in its plan as well as in subsequent filings including its Response to Objections, Reply to Responses to Objections, Brief on Exceptions and Reply to Briefs on Exceptions), it also, for some inexplicable reason, withheld these criticisms during the processes leading up to its filing

of the 2015 Plan, including its June 4, 2014 workshop and the draft plan it published on August 15, 2014. In RESA's opinion, the IPA's withholding of criticisms is contrary to the Commission's desire for a thorough and accurate analysis based on the merits of the proposed change.

## III. THE COMMISSION SHOULD NOT REQUIRE THE INCLUSION OF A CLEAN COAL PROCUREMENT IN THE 2015 PLAN.

### A. RESPONSE TO THE IPA

The IPA stands by in its analysis in the 2015 Plan, which considered but rejected the position of Sargas to include a competitive clean coal procurement for projects such as that contemplated by Sargas.[2] RESA agrees with the IPA that it should not include such a procurement in the 2015 Plan. However, RESA is compelled to respond to one of the positions taken by the IPA in its Response. The IPA basically relies on the opinion in *Commonwealth Edison Co. v. Illinois Commerce Commission*, 2014 IL App (1st) 130544, July 22, 2014, to state that while the Commission has the authority to require Alternative Retail Electric Suppliers ("ARES") to enter into sourcing agreements with a retrofitted clean coal facility such as FutureGen, the Commission does not have the authority to require ARES to enter into sourcing agreements with other types of clean coal facilities, such as that contemplated by Sargas. (IPA Response, pp. 33-34) RESA disagrees with the IPA's position and the Appellate Court's acceptance of that opinion and notes that the Appellate Court's opinion is the subject of a motion for leave to appeal to the Illinois Supreme Court. Thus, the IPA relies on a decision which is pending further appeal for support for Commission authority to impose sourcing agreement burdens on ARES for retrofitted clean coal plants, which is premature at best. In RESA's

[2] Sargas is seeking to develop a coal-fired plant in Mattoon, Illinois designed to burn Illinois coal with 90% post-combustion carbon capture.

opinion, the IPA and the Commission do not have the authority to require ARES to enter into sourcing agreements, other than with the initial clean coal facility, which neither FutureGen nor Sargas is.

B. RESPONSE TO COMMISSION STAFF

The Commission Staff also supports the exclusion of the clean coal procurement proposed by Sargas from the 2015 Plan. While RESA agrees with the Commission Staff that that procurement should be excluded, RESA disagrees with the Commission Staff's position, similar to that of the IPA, that the IPA and the Commission can require ARES to enter into a sourcing agreement with a retrofitted clean coal facility.

C. RESPONSE TO AIC

AIC takes the position, and RESA agrees, that the decision of the IPA to omit the clean coal procurement proposed from the 2015 Plan is appropriate because the legal basis is lacking and the future rate cap balance, if any, remains uncertain.

D. RESPONSE TO COMED

ComEd takes the position, and RESA agrees, that the IPA Act neither requires nor authorizes the clean coal procurement requirement of ARES as proposed by Sargas.

E. RESPONSE TO ICEA

ICEA also takes the position that the IPA correctly decided not to include the clean coal procurement proposed by Sargas in the 2015 Plan. Moreover, ICEA also states the position, supported by RESA, that it does not agree with the Illinois Appellate Court's decision which found that the Commission had the authority to require ARES to enter into sourcing agreements with retrofitted clean coal facilities such as FutureGen.

## IV. CONCLUSION

RESA commends the IPA for submitting a 2015 Plan that is generally based on a thorough and thoughtful analysis, including its rejection of a clean coal procurement proposed by Sargas. However, RESA disagrees with the IPA in one important respect—the Commission should include the procurement of fixed-price full requirements products in ComEd's service territory. Specifically, the Commission should approve the inclusion of the ICEA Pilot Program in the 2015 Plan.

Respectfully submitted,

/S/ GERARD T. FOX
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**STATE OF ILLINOIS** )
) **SS**
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## VERIFICATION

Gerard T. Fox, being first duly sworn, on oath deposes and says that he is an Attorney for the Retail Energy Supply Association, that he has read the foregoing Retail Energy Supply Association's 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.

/s/GERARD T. FOX
Gerard T. Fox

Subscribed and sworn to me

This 30th day of October, 2014

OFFICIAL SEAL
CLAUDIA A GUNDERSON
NOTARY PUBLIC-STATE OF ILLINOIS
MY COMMISSION EXPIRES 08/23/2016

## NOTICE OF FILING

Please take note that on October 31, 2014 I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Retail Energy Supply Association's Verified Reply to Responses to Objections in this proceeding.

/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 Verified Reply to Responses to Objections upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on October 31, 2014.

/s/ Gerard T. Fox
Gerard T. Fox