STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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
REPLY TO BRIEFS ON EXCEPTIONS

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 its Brief on Exceptions to the Administrative Law Judge's Proposed Order ("ALJPO") on November 21, 2014. A number of other parties also submitted Briefs on Exceptions to the ALJPO regarding a large number of issues. RESA will only address two issues in this Reply.

First, RESA continues to 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 its Brief on Exceptions, ICEA takes the primary position that the pilot program should be approved. However, it also advances two alternative proposals, which RESA supports. In addition, the IPA addressed FPFR products and, inappropriately, argues that parties should be precluded from proposing such products in future procurement plan cases.

Second, Sargas, Inc. ("Sargas") continues to argue that the IPA should conduct a clean coal procurement as part of the 2015 Plan. RESA continues to oppose Sargas' position on this matter.

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, based on a review of Illinois-specific data. Without the ICEA Pilot Program, all of the arguments opposing the program are based on speculation, not real results.

In its Brief on Exceptions, ICEA demonstrated that, contrary to the ALJPO, the record evidence of the proponents of the FPFR pilot program (ICEA, RESA and Exelon Generation) outweighed the evidence against the pilot. (ICEA BOE, pp. 6-8). ICEA also demonstrated that the ALJPO misses the point of conduct a pilot program, namely the benefits of FPFR products can be quantified by the pilot program. (*Id*., pp. 8-10) RESA agrees with ICEA's on both of these points.

However, in the event that the Commission still believes that there is not enough evidence in this proceeding to order the implementation of its pilot program, ICEA offers two alternatives. First, the Commission could encourage the filing of a petition for rehearing on the issue of FPFR products, which, if granted, would allow for an additional five months to review the evidence. (*Id*., p. 11) RESA agrees that this would be a better alternative than outright rejection of the pilot program and, as noted by ICEA, the Commission utilized a similar means to give further consideration to the proposals of the Renewable Suppliers in Ill. C. C. Docket 13-0546, the previous IPA procurement plan proceeding. Second, the Commission could direct stakeholders to discuss and come prepared to the next procurement plan proceeding with implementation proposals. (*Id*.) While RESA prefers ICEA's primary position—approval of the ICEA pilot program in the Commission's final order in this proceeding—or the first alternative, provide further consideration to the pilot program on rehearing, ICEA's second alternative is, once again, a better alternative than outright rejection of the pilot program.

B. RESPONSE TO THE IPA

Not content that the ALJPO accepts IPA's decision to exclude the ICEA pilot program from its 2015 Plan, the IPA seeks to put a dagger into FPFR products for all time. After complaining about the amount of its resources that the IPA has expended on the subject of FPFR products, the IPA asks the Commission to amend the ALJPO to provide that it will no longer consider proposals for procurement of FPFR products, except in the unlikely event that the IPA itself makes such a proposal: "As the Commission has considered full requirements procurement in approving several IPA procurement plans and has reached the same conclusion multiple times, the Commission does not wish to further address this issue unless it is raised by the agency in a future plan, thus leaving the decision to provide any new analysis of full requirements procurement to the discretion of the IPA". (IPA BOE, p. 4)

With all due respect, RESA believes that the IPA has not spent enough resources in consideration of FPFR requirements, in general, and the ICEA pilot program, specifically. At any rate, it is completely inappropriate for the IPA to attempt to tie the hands of future Commissions in the order in this proceeding. The entire principle that Commission decisions are not *stare decisis* is not to bind future Commissions to the decisions of prior Commissions. Instead, each case must be determined on its merits. The proposal of the IPA should be rejected.

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

The ALJPO correctly analyzed the proposal of Sargas to include a competitive clean coal procurement for projects such as that contemplated by Sargas.[2] The ALJPO correctly

[2] Sargas is seeking to develop a coal-fired plant in Mattoon, Illinois designed to burn Illinois coal with 90% post-combustion carbon capture. Such a plant is neither the initial clean coal facility, nor a retrofitted clean coal facility, as those terms are used in the Illinois Power Agency Act.

determined that, even if the Sargas facility qualified as a clean coal facility under Illinois law (and it does not), there was essentially no discussion of how the IPA or the Commission would develop or evaluate a sourcing agreement with such a clean coal facility. The ALJPO went on to state it is not convinced that the Sargas proposal was contemplated by the Illinois General Assembly or is in the public interest and therefore concludes, that the Commission will not include a competitive clean coal procurement in the pending plan.

Sargas' Brief on Exceptions proposes to revise the ALJPO to reverse its position and order a competitive clean coal procurement as contemplated by Sargas. However, Sargas does not in any way refute the analysis of the ALJPO that supported its conclusion to exclude the proposal. Sargas' proposal should be rejected based on the careful and thorough analysis set forth in the ALJPO.

IV. CONCLUSION

First, 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. If the Commission determines not to approve the ICEA Pilot Program, the Commission should adopt one of the two alternatives proposed by ICEA in its Brief on Exceptions. In any event, the Commission should reject the IPA's attempt to prohibit the consideration of FPFR products in future procurement plans.

Second, the Commission should approve the ALJPO's rejection of the Sargas' proposal for a competitive clean coal procurement event.

Respectfully submitted,

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NOTICE OF FILING

Please take note that on December 1, 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 Reply to Briefs on Exceptions 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 Reply to Briefs 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 December 1, 2014.

/s/ GERARD T. FOX
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