ENVIRONMENTAL LAW & POLICY CENTER
Protecting the Midwest's Environment and Natural Heritage

**Comments of the Environmental Law & Policy Center on the Illinois Power Agency's 2016 Draft Procurement Plan**

The Environmental Law & Policy Center (ELPC) respectfully submits these comments in response to the Illinois Power Agency's (IPA) 2016 Draft Procurement Plan.

## Renewable Resource Procurement

The IPA proposes two different approaches to renewable resources procurements using different ratepayer funds: 1) the procurement of solar renewable energy credits (RECs) for ComEd, Ameren, and MidAmerican as well as wind and overall RECs for ComEd and MidAmerican using the Renewable Resources Budget (RRB) and 2) the procurement of distributed generation (DG) RECs for all three utilities using resources from Alternative Compliance Payment (ACP) funds from hourly customers for Ameren and ComEd and from the RRB for MidAmerican. The draft plan also discusses the portion of MidAmerican load for which the IPA should procure RECs, the approach for curtailment of long-term contracts (LTCs) in the unexpected event that RRB funds are not enough to cover LTCs, and the IPA's inability to use the Renewable Energy Resources Fund.

Most aspects of the proposed renewable resources procurement are in line with previous years' approaches; however the IPA proposes several changes to the DG procurement, given problems in years past. We will comment briefly on the IPA's renewable energy procurement strategy overall before focusing the bulk of our comments on the DG procurement in an effort to help that procurement achieve success.

**Overall Strategy for the Renewable Energy Resources Procurement**

1) The IPA should strive to develop a program for the procurement of renewable energy resources that is simple, transparent, predictable, and equitable. Simplicity and transparency will help the industry scale-up in a predictable way, in the face of what is admittedly an extremely complicated legislative and regulatory scheme in Illinois. This is especially true for distributed generation resources where the industry is more nascent in Illinois. Therefore, the Agency should avoid injecting unnecessary complexity into the program design.
2) The IPA should design the program with a view towards future procurements and should strive to avoid the "boom-and-bust" cycles that have plagued programs in other jurisdictions. Thus, the IPA should not limit the amount of renewable resources it procures only to the current statutory requirement if more cost-effective DG resources are available for purchase and funds are available to cover those contracts. We believe this for two reasons. First, the statutory requirements are the minimum requirement, and will continue to increase in the future. Therefore we should maximize the use of available funds to purchase cost-effective resources that will be needed in the future. Second, as noted by the IPA, DG RECs that are wind or solar also count for the statutory wind and solar requirements. From the IPA's calculations all the utilities are short on solar RECs and all but Ameren are short on wind RECs for this compliance year. Furthermore requirements for both solar and wind RECs are expected to rise every year over the five year planning period. Any longer-term RECs purchased today can help fill those future year gaps, realizing price stability over time.
3) To the extent possible, the IPA should strive to administer programs that will lead to the development of new renewable energy systems in Illinois, rather than just provide an additional income stream to projects that have already been built and financed. Doing so would yield a variety of benefits consistent with the goals of the IPA Act, including encouraging resource diversity, advancing price competition and price stability, promoting investment and development, and avoiding the need for new

generation, transmission, and distribution infrastructure.[1] Failing to do so will preclude the growth of private investment in this sector, deprive the electric system of significant and measurable benefits, and inhibit the development of a diverse, mature and sustainable renewable energy industry in Illinois.

**DG Procurement**

The IPA proposes an approach to the 2016-2017 DG procurement that pulls both from the previous years' DG procurement as well as recent supplemental REC procurements in an effort to design a procurement that will work. We applaud the IPA's commitment to implementing the RPS and working creatively to design a process that makes the DG procurement work within the confines of current legislative requirements. In particular, we endorse the IPA's proposal to procure speculative RECs for systems under 25 kW. Project economics and business models for small-scale and particularly residential solar DG make project identification prior to locking in REC prices unrealistic at best. Small scale solar customers are simply unwilling and unable to commit to system development absent REC-price certainty. There are a number of ways to ensure such certainty, including via set-price incentives, but the speculative approach has thus far proved successful in Illinois via the supplemental PV procurements. In fact, some of the risks that come with speculative procurements, including that bidders would significantly overbid RECs and then not be able to deliver, have not materialized even to the degree planned for – as indicated by the IPA's announcement that it will be unlikely to need a fourth supplemental procurement to absorb overbid RECs. While we view the move toward a speculative procurement as one of the most important changes to the DG procurement that will enable success, below are a number of other suggestions and considerations.

- **Consider expanding speculative procurement to systems larger than 25 kW.** As previously stated, ELPC endorses allowing speculative procurement for systems below 25 kW. However we recommend the IPA consider expanding speculative bidding to systems larger than 25 kW, perhaps up to something near 150 kW. Although 25 kW is the cutoff point for small vs large systems in the RPS for good reason (to encourage

[1] 20 ILCS 3855/1-5.

residential deployment), it does not follow that 25 kW is the cutoff point at which developers are able to sell systems without REC-price certainty. Therefore, in order to encourage the development of mid-sized DG systems, we recommend considering expanding the speculative option to mid-sized systems that are larger than 25 kW.

- **Develop confidential benchmarks with different values within the large DG (25 kW to 2 MW) category.** The large DG system size category includes systems as small as 25 kW and as large as 2 MW. However, realistically, systems at opposite ends of this price range operate very differently. As discussed above, systems at the smaller end of this range often struggle to move ahead if REC prices are not set in advance. Furthermore 25 kW systems cannot take advantage of the same economies of scale as larger systems. Therefore in order to encourage a diversity of large DG system development, particularly the development of systems on the small end of the large DG classification, the use of multiple benchmarks with the large DG category is warranted.
- **We support the IPA's proposal to lower the required per-REC deposit.** The IPA proposes a deposit level of $4/REC for both identified and speculative systems, substantially lower than deposit level in either the previous DG procurement ($8/REC) or the supplemental PV procurement ($8/REC – identified systems; $16/REC – speculative systems). Requiring a deposit is important to ensure that bidders do not bid for REC amounts in excess of what they believe they can deliver and that all bids are serious bids; however it is also a barrier to entry, particularly for small businesses with limited cash on hand/access to letters of credit. We have heard from some of the smaller solar developers in Illinois that these deposit requirements have limited their ability to participate fully in procurements in the past, particularly in the speculative procurement where that cost cannot be passed on to building owners. Thus we support the IPA lowering the per-REC deposit requirement so long as it continues to serve a deterrent to submitting spurious bids.
- **Consider splitting the DG procurement into more than one procurement event.** The IPA does not specify a proposed timeline for the DG procurement. We recommend the IPA consider the merits of splitting the DG procurement into more than one procurement event. A single annual procurement event works well for large projects, where the

development timeline is typically 12+ months and the larger procurement budgets make submitting a bid more worthwhile, however they often do not work well for smaller project. Smaller solar DG projects have a much shorter development timeline so scheduling DG procurements no more frequently than an annual basis can lead to a boom-bust cycle for these developers within the course of the year. Furthermore, annual DG procurement events exacerbate the problems faced by those developers for whom the deposit is a barrier to entry. Small businesses with limited cash on hand may struggle to carry those deposits on the books for a full year and/or be artificially limited in the number of systems for which they are able to submit bids. Nonetheless in considering whether to split the DG procurement, the IPA should also take into account the needs of larger developers to ensure the budget/REC pool in any single procurement event is large enough to spur their participation, as well.

- **We support the IPA's proposal to allow nine months with no extension for speculative developers to ID systems.** This proposal differs from the approach used in the supplemental PV procurement – six months with a three month extension. Our understanding from speaking with some developers and aggregators is that taking the extension option was more common than it was not, and as such, it served to create extra paperwork more than anything else. Offering a full nine months for the identification of speculative systems with no extension effectively serves to offer the same amount of time but to limit paperwork for both developers/aggregators and the IPA, thus lowering transaction costs.
- **We support the IPA's proposal to allow large and small systems to join together in a single bid.** This proposal should help more systems get over the 1 MW bid size minimum that has proved such a barrier to entry in past procurement events, particularly for smaller systems. One externality that could occur from allowing these mixed bids is that large groups of small systems that are prepared to make a bid in a group with a large system could miss their opportunity to bid if that large system falls out of the bid at the last minute, pushing the bid size below 1 MW. This is a risk of allowing mixed bids, but likely a better risk than having smaller systems unable to bid at all due to an inability to reach the bid size minimum.

- **Clarify the timing of REC deliveries for speculative systems.** The IPA's draft proposal makes two seemingly conflicting comments regarding the timing of REC deliveries: that REC quantities delivered must be the same for last four delivery years of the planning period (2018-2021) AND that speculative systems do not need to begin delivering RECs until May 2019 – the *end* of the 2018 delivery year. We support the timing proposed for the requirement of speculative system REC delivery (i.e. systems will have until May 2019), as speculative systems will need time to be developed and get up and running. However this timing could lead to different REC quantities in the second delivery year than in the final three delivery years for speculative systems. The interaction of these two requirements should be clarified.
- **We support the IPA's proposal to consider creative solutions for encouraging the participation of REC aggregators.** Given the 1 MW bid size minimum, aggregators are necessary part of functioning DG REC market in Illinois so designing procurements to facilitate aggregator participation is key to a successful procurement. Below are a number of suggestions to facilitate aggregator participation:
    - **Consider standardizing utility contracts and/or limiting the need for systems to sign multiple contracts, to the extent possible.** Feedback from aggregators indicates that having different contracts for different utilities and requiring every system to meet the requirements of all contracts greatly increases the amount of work required to prepare every single system in a bid for the procurement. As such it increases transaction costs and makes participation in the Illinois DG procurement less likely to be worth the cost.
    - **Consider streamlining the system identification, verification and energizing process by bunching submittal deadlines so that paperwork can be submitted all at once rather than piecemeal.** Feedback from aggregators indicates that having multiple different deadlines for different documents and submittals is significantly more cumbersome than a single deadline would be. Multiple deadlines create the need for multiple touchpoints with system owners and multiple opportunities for communication to go awry. Bunching submittal

deadlines to the extent possible could alleviate this challenge and would hopefully also lower transaction costs for the IPA.

- **Consider the pros and cons of working collaboratively with aggregators to allow them to verify some of the system characteristics currently verified by the IPA.** System identification and verification by the IPA is an important element of ensuring RECs bought are meeting the goals and requirements of the RPS and providing protection to Illinois consumers, for whom these RECs are ultimately being bought. However, this level of identification and verification on the individual system level presents a significant departure from how aggregators operate in other markets. In other markets, the responsibility lies on the aggregator to identify and verify systems and the final REC buyer, in this case the IPA, contracts with the aggregator to receive RECs rather than with individual system owners. It may be worth exploring whether or not any components of the system identification and verification process could be ceded to aggregators without risking an unacceptable lack of oversight and control on the part of the IPA.

**Energy Efficiency Procurement**

Chapter 9 of the Procurement Plan sets recommendations for the consideration and approval of incremental energy efficiency programs under Section 16-111.5B of the Public Utilities Act. ELPC is pleased that the IPA proposes to procure incremental energy efficiency to meet customer electricity demand in Illinois. Utility-run and third party efficiency programs provide customer and societal benefits and help reduce energy costs for customers. Many customers will not or cannot implement cost-effective energy saving measures without assistance from their utility or third party programs. As ELPC has seen time and time again in Illinois and other states, the default action for customers regarding energy efficiency and reducing waste is no action, even when it is in a customer's best interest to lower their energy bills. Ratepayer funds should be spent to encourage deployment of efficiency measures that are unlikely to occur absent utility or third party programs.

In Illinois, approved third party programs must be cost-effective, which by definition means the benefits exceed the costs as measured by the Total Resource Cost Test. Therefore, any program with a TRC at or above one means customers will see a net benefit from avoided energy costs, avoided transmission and distribution costs, and reduced carbon emissions and other pollution. Efficiency also provides additional benefits for consumers, the utility, and society, ranging from lower system demand, increased economic activity, improved building stock, and lower customer arrearages. Additionally, spending on energy efficiency measures today means customers can start saving money today and will have a hedge against increased energy prices in the future.

While Illinois has robust utility-run efficiency programs under Sections 8-103 and 8-104 of the Public Utilities Act (EEPS Programs), these programs are limited by a rate impact cap that prevents the utilities from meeting their statutory targets for energy efficiency. The IPA third party procurement of efficiency plays an important role in enabling additional cost-effective energy efficiency programs for Illinois residents that gets the utilities closer to the statutory targets.

For these reasons we applaud the IPA's proposed procurement of energy efficiency. We offer the following specific comments on the Proposed Plan:

In Section 9.4.1, the IPA mentions the possibility of the utilities using the utility Potential Studies, which are required by law, to specifically solicit new efficiency programs from third parties. ELPC supports this idea and encourages the commission to direct the utilities, in addition to issuing a general RFP for third party programs, to pursue specific bids for efficiency programs identified as having significant cost-effective potential in their Potential Studies. While any third party is welcome to propose a program for the IPA procurement in response to the utility RFP, as the IPA notes, outreach and publication of the RFP is fairly limited. Specifically highlighting in the RFP technologies that the potential study identifies as opportunity for efficiency, and distributing the RFP to trade groups, conferences, and/or known providers of those types of efficiency is likely to elicit a more robust response from bidders.

Capturing as much cost-effective energy efficiency as possible will increase the benefits to ratepayers and Illinois residents and the RFP process should target efficiency programs identified by the potential studies. Further, the utilities should be encouraged to publicize the efficiency RFPs more widely.

In Section 9.4.2, the IPA suggests additional examination of the issue of whether the utilities should actively negotiate with bidders to refine third party proposals. Some utilities have argued in the past that this would give certain bidders an advantage over others in the process. ELPC believes that encouraging utilities to negotiate with bidders, which may lead to final programs that are different from the initial bids, is best for utility customers and will serve to strengthen third party efficiency programs. Not every bidder knows the full detail of the Illinois market and a utility's customer makeup, and therefore may make inaccurate assumptions in their bid. ELPC believes that the utilities should make a good faith effort to engage with bidders as a way to improve third party programs and benefit Illinois ratepayers. Because this idea may be opposed strongly by the utilities, we suggest that it be done on a pilot basis for the 2018 procurement, and then assessed for whether allowing negotiations was a positive step for the third party procurement.

Further, ELPC sees utility-bidder negotiation as a potential way to enable bids that may have both gas and electric savings to participate in the 16-111.5B process. If, for example, a bid has both gas and electricity savings, there may be a way for the utility and bidder to negotiate a solution wherein 8-104 funding pays for the gas savings while 16-111.5B funding pays for the electricity savings. This may alleviate some of the concerns raised by Ameren this year when some cost effective bids happened to have gas savings in addition to their electricity savings. ELPC asks the Commission to encourage the utilities to engage with bidders in a way that would help address some of these issues and pave the way for additional cost-effective efficiency in the state.

In Section 9.4.3, the IPA raises the idea of the Commission formally approving a process or test under which programs that pose a significant performance risk can be excluded from the plan.

ELPC supports this idea. As one of the stakeholder groups that has provided input to the third party efficiency program bid reviews over the last several years, ELPC acknowledges the need for a formal test or standard by which performance risk can be judged. This will not only make the stakeholder and utility review process more straightforward and less contentious, but it has potential to strengthen the pool of bids that third parties submit. If it is clear that bids will be rejected when bidders have not met a performance threshold in past years, then the benefits are twofold: 1) the bidders may work to ensure their programs perform better for fear of being excluded in the future; and 2) poorly-performing programs will be excluded thus reducing the odds of "good" bids being rejected for being duplicative or competing. ELPC cautions that any such screening or test be developed with input from stakeholders who have been involved in the third party bid review process over the last few years, and that it not be left solely to the utilities to decide.

In Section 9.5.1, the IPA raises concern that the introduction of surety bonds has chilled participation in the third party efficiency procurement process. ELPC echoes these concerns. We heard from at least one potential bidder in the last year that surety bonds proved to be too onerous a requirement for participation in the RFP. ELPC believes that ratepayers are sufficiently protected from performance issues by the pay-for-performance nature of the IPA third party procurement, as well as by the proposed "performance risk test" discussed above and in Section 9.4.3. Surety bonds serve to prevent smaller efficiency providers from participating in the third party procurement and raise the costs of the programs, which therefore leaves Illinois ratepayers worse off.

In Section 9.5.4.1, the IPA discusses its disagreement with Ameren's rejection of cost effective programs that also generate gas savings. ELPC strongly believes that Ameren's approach is wrong, and supports the IPA's position. It is not clear to ELPC the threshold at which Ameren considers a program to have "too much" gas savings for it to be accepted. It has long been ELPC's belief, and practice in the IPA procurement process, that as long as a third party program passes the TRC test, it should be considered cost effective for inclusion in the IPA Procurement under 16-111.5B. Further, we read Ameren's calculation of the proportion of gas savings to

electricity savings on a BTU-basis (rather than on a financial basis) as a convenient way to exclude as many programs as it can. Cost-benefit analyses like the TRC test are performed by converting costs and benefits into a common unit, in this case dollars, and comparing them apples-to-apples. If Ameren is going to screen out programs based on their gas-to-electricity savings ratios, those should be calculated based on the financial value of the energy saved and the Commission should establish a clear threshold for what constitutes an acceptable ratio of gas-to-electricity savings. This threshold should be subject to stakeholder input and then published in the RFPs. (Note that ELPC does not think Ameren should be screening out programs based on a gas-to-electricity savings ratio at all).

In Section 9.5.4.3 the IPA discusses a behavioral program that was bid in response to Ameren's RFP. The proposed program has four options for participation: (250,000 core homes, 250,000 core homes plus 50,000 all-electric homes, 250,000 core homes plus 100,000 all-electric homes, and 250,000 core homes plus 125,000 all-electric homes). Ameren and the IPA differ on how the proposed program should be screened for cost effectiveness. Ameren screened the core homes separately from each expansion pool, and excluded any gas savings from the core home screening. IPA posits that each of the four options of the proposal (the core homes and each expansion pool) should be screened as a bundle. That is, rather than screening the 250,000 core homes separately from the 50,000 all electric homes, the 300,000 homes should be screened together as one bundled program. ELPC agrees with the IPA and thinks that it is logical and obvious that the TRC screening be conducted this way. Under no scenario will the bidder be running a program to only 50,000 all-electric homes. The proposed options are for 250,000 homes, 300,000 homes, 350,000 homes, and 375,000 homes, and the programs should be screened as such. When they are screened in such a way, as the IPA shows on page 120, they prove to pass the TRC and are cost effective. Further, as the IPA notes, each of these expanded programs passes the TRC even while excluding gas benefits. Therefore, Ameren was mistaken in rejecting the behavioral programs and they should be approved.

Respectfully submitted,

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