



ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

COMMENTS OF THE ENVIRONMENTAL LAW & POLICY CENTER REGARDING THE IPA'S 2015 DRAFT PROCUREMENT PLAN

The Environmental Law & Policy Center (ELPC) respectfully submits these comments in response to the Illinois Power Agency's (IPA) 2015 Draft Procurement Plan. We have arranged our comments into two sections, energy efficiency and renewable resources procurement.

Energy Efficiency Procurement

Sections 7.1 and 7.2 of the Draft Plan discuss energy efficiency as a supply resource (EEAASR) and incremental energy efficiency. We will discuss each separately.

ELPC Supports the IPA's Approach to Energy Efficiency as a Supply Resource

ELPC is pleased that the IPA has laid out a framework for procurement of EEAASR in 2015 for delivery in 2016. ELPC believes that reducing load through energy efficiency on the customer side of the meter during "super peak" hours in the summer can be a cost-effective strategy to reduce reliance on conventional supply, reduce costs for ratepayers, and relieve stress on the grid. Ideally, these products should be delivered as soon as possible, but ELPC understands the need for a thoughtful, consistent approach to ensure suppliers participate and the actual products procured are robust.

ELPC appreciates the open approach the Agency has taken in developing this framework, by holding workshops, welcoming comments, and answering questions. ELPC attended the Agency's workshops on the subject, and plans to participate in any others moving forward. ELPC believes stakeholder engagement can help ensure a more thorough procurement process that positions the Agency for a successful procurement of EEAASR.

ELPC is glad to see that the IPA proposes to procure 3-year delivery contracts of EEAASR products. Three years is long enough to attract suppliers that require longer-term

35 East Wacker Drive, Suite 1600 • Chicago, Illinois 60601
(312) 673-6500 • www.ELPC.org

David C. Wilhelm, Chairperson • Howard A. Learner, Executive Director

Columbus, OH • Des Moines, IA • Duluth, MN • Jamestown, ND • Madison, WI • Sioux Falls, SD • Washington, D.C.



stability to recover startup costs and administrative expenses, while it is also short enough to allow products to adapt to changes in the market that may occur over three years.

ELPC looks forward to participating in the proposed IPA workshops in Spring of 2015 and to the eventual procurement of EEAASR for super-peak blocks in 2016.

Recommendations for the Third Party Efficiency Programs

ELPC believes that the incremental energy efficiency programs have yielded benefits to consumers and the grid, and the IPA should take into consideration measures that would increase participation and transparency. In the Draft Plan, the IPA asks “should the utilities be expressly encouraged to engage stakeholders in the review of third party program bids and duplicative program determinations” (IPA Draft Plan at page 73). ELPC thinks that yes, the utilities should be engaging stakeholders in the review of third party program bids. ELPC participated in the review process for ComEd’s third party program proposals, and found that the stakeholders were able to suggest improvements to the procurement process and offered specific program adjustments. The stakeholder review process with ComEd was run very well, with ComEd and its consultant holding multiple, thorough discussions with stakeholders over the course of three weeks. ComEd provided all stakeholders with bid proposals and score sheets well in advance of the IPA deadline; ComEd scheduled several calls to review stakeholder input and scores and to attempt to reach consensus; and ComEd promptly provided answers to stakeholder questions and followed up with other parties when needed. ComEd encouraged thorough discussion on each proposal and made it clear that it wanted third-party efficiency programs to succeed. ELPC commends ComEd for its openness and thoroughness, and the IPA should encourage this approach for any future third-party procurement process that the utilities lead.

ELPC also participated in a review of Ameren’s third-party efficiency program proposals prior to Ameren submitting the recommendations to the Agency. In contrast to the ComEd process, Ameren allowed very little engagement or feedback from the stakeholders, as the review was conducted very close to the Agency submission deadline and after Ameren had made all of its determinations on which programs were duplicative and which were competing. ELPC would like to suggest a more open forum for stakeholder engagement on the third-party efficiency

program proposals, further in advance of the deadline, similar to the format ComEd used, outlined above.

One issue that needs clarification from the IPA is what role the utilities should play in helping the third parties improve their bids. ELPC believes that the IPA should direct the utilities to provide feedback to the parties whose bids fail the initial screen and accept a revised bid for review in certain circumstances. ELPC realizes that the procurement process must be fair to all applicants, and allowing bid revisions and re-submissions could give an unfair advantage to bidders whose proposals were not complete or cost effective. However, in the interest of procuring cost-effective incremental energy efficiency in accordance with the law, there is a path for the utilities to engage with bidders and accept some revisions to proposals.

While ELPC cannot cite specific examples from the 2014 third-party efficiency procurement process due to confidentiality of the bids and TRC results, it can present a hypothetical situation to illustrate this recommendation. Assume a bidder submits a proposal to replace inefficient refrigeration systems with efficient ones for small commercial customers. In this situation, no similar program in the utility-run efficiency portfolio exists, nor were there any other similar submissions to the third party efficiency program RFP. However, this proposal scored a .98 on the TRC. Under the current system, this proposal would have been rejected. It is possible that with small adjustments to its proposal that the program bid would have passed the TRC with a score of 1.0 or higher. This utility feedback could mean the difference between a third party implementing a unique program and at least another few years of inefficient refrigerators wasting electricity in Illinois.

To further illustrate this point, assume the same proposal is submitted for a commercial refrigeration program, and passes the TRC. But this time, the utility offers a similar program through its portfolio programs that targets small convenience stores. This proposal is likely to be rejected under the current process. However, there may be room in the market for the utility to continue its refrigeration program with convenience stores, while the third party bidder focuses on a sector not served by the utility program – e.g. larger stores, schools, hospitals, restaurants, specialty food shops, or another customer type that may also have inefficient refrigeration. Allowing the third-party to refine its proposal in this instance would allow an underserved customer segment to access a new efficiency program. ELPC does not view this as giving

bidders unfair advantages in the process. Rather, it sees this as a way to ensure that good efficiency programs are designed and procured despite an imperfect system in which bidding parties do not have all of the information they need to create a passing bid on their first try.

The IPA cites an example in its draft proposal of Ameren rejecting a smart thermostat program it “determined did not meet the RFP criteria for two reasons: it was ‘proposed as both a gas and electric savings program, yet the 16-111.5B energy efficiency incrementalsavings is for the purpose of decreasing electric procurement, not gas;’ and ‘[m]ore than 50% of the energy savings are gas but there are no gas dollars to run the program through IPA.’”¹ (IPA Draft Plan at page 74). ELPC would have liked Ameren to consider this vendor’s proposal for electric-only homes. With guidance from the IPA that such feedback and resubmissions are acceptable, Ameren could have asked the bidder to resubmit its smart thermostat program bid targeting all-electric customers, and it may have been accepted by the IPA this year.

The Agency further notes in its Procurement Plan that “the Agency invites DCEO to provide feedback on its draft Plan...” (IPA Draft Plan at page 75). ELPC would like to highlight that during the ComEd stakeholder review of the third-party efficiency programs, DCEO actively participated in the process. The format with which ComEd conducted its review allowed sufficient feedback from DCEO into whether program proposals risked overlap, and ELPC suggests that directing Ameren to engage with DCEO and the stakeholders early in the process, as ComEd did, is sufficient for evaluating this risk.

The Agency writes that it “actively seeks feedback from stakeholders on which proposal may constitute the best approach” with regard to choosing a residential behavioral modification program for Ameren (IPA Draft Plan at page 76). ELPC supports inclusion of behavioral programs, as they can have lasting savings impacts that technology measures may miss. ELPC agrees that the two proposals are duplicative and that only one should be chosen. Given that spending, savings, and TRC scores do not vary drastically between the two proposals, there is value in using a vendor with a proven record in the utility’s service territory. Since the program bid is for only two years, it is imperative that the vendor runs a successful program from the very

¹ This highlights a major flaw in the third-party energy efficiency procurement process that should be addressed by the IPA and the Legislature. Good programs that could reduce both electricity and gas usage are rejected because the IPA only procures electric energy efficiency in its plan. In many programs, such as weatherization and smart thermostat programs, the measures provide both an electric and gas benefit.

beginning. The Home Energy Reports program team has been working with Ameren in its Illinois service territory already, and has shown it can deliver customer savings. For this reason, ELPC agrees with the Agency's recommendation to include the Home Energy Reports behavioral program in its Procurement Plan.

The IPA Should Review Utilities' Total Resource Cost Test Assumptions and Inputs

The Public Utilities Act (PUA) directs the IPA to include cost-effective energy efficiency programs and measures in its Procurement Plan. The PUA defines cost effective measures as those that pass the total resource cost test (TRC). ELPC understands that the utility (or the utility's consultant) performs the TRC test on the proposed third party programs, and sends the results onward to the IPA for review. ELPC would like the IPA to independently evaluate the assumptions and inputs the utilities apply when testing third party proposals for cost effectiveness. Rather than accepting the utilities' TRC test results at face value, the IPA should take a more standardized approach to the TRC test.

Allowing the IPA to review the TRC assumptions and make changes where necessary would give the evaluation process a greater consistency between utilities. In the stakeholder review process, nearly identical programs passed the TRC for ComEd but failed for Ameren. Under the current process, we had no insight as to why that occurred. Stakeholders can't determine whether that was a result of inconsistencies between how the two utilities apply the TRC, or simply the nature of the cost to run programs in ComEd territory versus in Ameren territory. The IPA should review both utilities' TRC assumptions to ensure consistency throughout Illinois.

ELPC Supports the LED Streetlighting Program

The IPA highlights in Table 7-3 that it will procure efficiency from ComEd's proposed LED Streetlighting program, in addition to the aforementioned third-party programs and the residential lighting programs that moved from 8-103. ELPC applauds ComEd and the Agency for identifying LED streetlights as an opportunity for significant cost-effective energy savings and supports the program's inclusion in the procurement along with the other incremental efficiency programs.

Renewable Resource Procurement

The IPA proposes two different renewable resources procurements using different ratepayer funds and two additional procurements that may be “synchronized” with the two procurements proposed here. Sections 8.1 and 8.2 of the Draft Plan discuss the IPA’s proposal to procure up to 80,000 solar renewable energy credits (SRECs) for ComEd and Ameren customers using up to approximately \$9 million available in the Renewable Resources Budgets (RRB). Section 8.3 of the Draft Plan discusses the IPA’s proposal to use approximately \$13.4 million in previously-collected Alternative Compliance Payment (ACP) funds from hourly customers to purchase up to 19,700 distributed generation (DG) RECs with contracts of 5 years in length. The IPA also notes that it will be conducting a separate supplemental solar procurement pursuant to Section 1-56(i) of the IPA Act and, potentially, one or more additional procurements using funds in the IPA’s Renewable Energy Resources Fund (RERF), comprised of Alternative Compliance Payments collected from Alternative Retail Energy Suppliers (ARES). The IPA intends to “synchronize” these two additional procurement processes with the renewable energy procurement activities proposed in this Plan.

We will comment on each of these specific procurement strategies individually, but first there are several overarching comments that apply to the IPA’s renewable energy procurement strategy generally:

- 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, and unpredictable, 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 the utilities are long on wind RECs, but short on solar RECs for this compliance year. The IPA may be able to purchase enough 1-year solar RECs to cover the current year's requirement, but the requirement jumps significantly 2 years out as RECs purchased through the rate stabilization procurement of 2012 come off the books. 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.² 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.
- 4) The IPA should put in place measures to reduce the likelihood of speculative or "phantom" projects. Measures the IPA should consider include a) requiring a refundable, per-kW deposit with the bid or in order to reserve a standard offer contract, b) requiring site control proof prior to acceptance, whether through a competitive or standard offer process, c) requiring intermediate steps such as proof of interconnection acceptance, d) requiring systems to be registered with PJM-GATs or M-RETS for tracking and retirement purposes, e) making payments only after

² 20 ILCS 3855/1-5.

systems have been energized and RECs tracked, eliminating a “take and run” scenario, and f) determining a waitlist for each size group, and a clear process for developers to determine where their projects are in the line.

- 5) Finally, the IPA should synchronize its long-term procurement strategy under the current plan with its parallel plans to use funds in the RERF for renewable energy procurement. We believe it would be prudent for the IPA to discuss its RERF plans in more detail in the final plan in order to enable more visibility, transparency, public input and comment into the overall renewable energy procurement strategy in Illinois. All of these principles should be considered regardless of the program design utilized.

Turning now to specifics, the IPA first recommends a “one-year SRECs procurement” to meet both ComEd’s and Ameren’s PV requirement for the 2015-2016 delivery year. The IPA proposes one-year contracts for SRECs instead of multi-year DG REC contracts because of the risk of changing future load forecasts affecting the size of the RRB in future years. According to the IPA, “[B]ecause future load forecasts could change and result in a curtailment of the existing [long-term power purchase agreements] from 2010, there could be risks of conflicting curtailment requirements if new multi-year contracts were entered into using funds collected from eligible retail customers.” (Draft Plan at 91).

ELPC understands the forecasting and budgeting challenge faced by the IPA in developing a long-term renewable resource procurement strategy in light of the shifting load forecasts due to customer switching to, and from, competitive suppliers. However, to the extent possible, we recommend a risk hedging strategy that does not rely primarily on procuring one-year SRECs. There is ample evidence from Illinois and elsewhere that new PV resources cannot be developed using one-year SREC contracts. Therefore, the IPA’s plan to allocate the entire RRB to one-year SREC contracts will likely not result in new solar PV development in Illinois and, therefore, will not further the goals of the Illinois RPS.

In order to address the risks of contract curtailments due to fluctuations in the utilities’ load forecasts, we recommend that the IPA explore alternative risk-hedging strategies that could lead to new renewable energy development. For example, the IPA should explore the possibility of using 5-year DG SREC contracts paid through an up-front rebate with appropriate claw-back

provisions for non-performance. The IPA should also explore other methods for creating more budget stability, including the possibility of having ComEd and Ameren escrow the portion of this year's RRB necessary to cover future contractual payments, instead of relying on future year budgets. We understand this could lead to the procurement of fewer DG SRECs using the 2015-2016 funds, but the SRECs actually procured would be linked to the development of new projects, which would further the state's renewable energy goals and lead to longer-term price stability.

Second, the IPA proposes to use the ACP funds from hourly customers to purchase DG RECs. The IPA proposes to procure up to 19,700 DG RECs with contracts of 5 years in length, in minimum aggregate amounts of 1 MW in capacity. DG RECs can be wind, solar or other eligible resources but must be customer-sited and used to displace customer usage. ELPC finds this to be a prudent use of hourly ACP funds because the money has already been collected to cover the entire 5-year contract, so there is no risk of curtailment. The IPA proposes three different models for procuring DG RECs, and ELPC will comment on them separately.

Full Competitive Procurement

In this scenario the IPA would conduct a competitive procurement of 1 MW blocks of DG resources, in much the same way it conducts procurements for other RECs. ELPC has several concerns about this procurement strategy, particularly regarding how this program would work for smaller projects. Bidding requirements are too complex and transaction costs are often too high to justify participation for small projects in full competitive procurements. Therefore, it is likely that the participation would be limited to only a few participants, and may inadvertently exclude the existing solar industry in Illinois. We also have a concern that a lack of transparency and consistency could cause additional confusion in the nascent residential market. Therefore, if the IPA is interested in pursuing this strategy, we recommend additional stakeholder discussions to more fully flesh out how this would work. We recommend particular focus on whether sufficient bidder interest could be generated in the <25 kW category to meet the statutory requirements, and at what cost, and how to ensure sufficient consumer protection. We would also urge the Agency to establish separate benchmarks for new vs. existing systems, for large vs. small systems, and for different renewable energy technologies (wind, solar, etc).

2013 Plan Model

This model is based on feedback received by the Agency in workshops and comments in 2012, and its “key features” include “segmenting the DG system market into sub-25 kW (“small”) and 25-kW-2 MW (“large”) categories, conducting a competitive procurement for RECs from large systems, and using the larger system procurement’s results multiplied by a proposed scalar for the development of a standard offer price for RECs from systems under 25 kW.” ELPC believes that many of the aspects of this model are still relevant and appropriate for this procurement.

The development of an appropriate “scalar” for small DG projects remains one of the most challenging aspects of this program model. We recommend additional stakeholder discussion on the development of a scalar if the IPA selects this option. It may be possible to implement a capacity-based step-down program design (or “declining-block” program) for the smaller DG projects in which the initial price for the first “tranche” of capacity is set using a scalar from the larger system auction and then prices fall on a predictable and transparent schedule. This could be a particularly good way to synchronize the IPA’s small DG procurements across the various other procurements that the Agency is planning in order to set out a longer-term, transparent pathway for the DG market to scale up in Illinois. We do believe the IPA should have separate benchmarks for new and existing system in this category to truly achieve cost-effectiveness and to achieve the appropriate scalar for an under 25 kW standard offer product. Instead of four separate delivery dates, the IPA should allow up to a year for delivery of RECs from new systems. With proper deposit requirements, bid control requirements, and intermediate check-ins, the IPA will be able to avoid speculative bids. For the smaller systems, one aggregator or program administrator should be used to administer the standard offer contract, whether in declining block format or not. There is no need to have multiple aggregators in this scenario, though there should be different standard offers for different products. The standard offer should be offered on a first come, first serve basis, with strict check-in requirements (proof of interconnection, etc.) to maintain a place in the queue. We suggest the IPA look to other states administration of similar programs as examples. As with the larger systems, delivery for new systems should be given one year, with appropriate check-ins.

Program Administrator as Aggregator

In this scenario there would be one aggregator for each utility, with a standard offer for every product, with the price determined by applying a scalar to the average price of SRECs procured with monies from the RRB. ELPC does not believe this is the most appropriate model for several reasons. First, we don't believe that commercial systems need a standard offer, and instead can participate in a normal RFP process. Second, the average price of SRECs procured with monies from the RRB is not the appropriate price to scale for the standard offer. The SRECs procured with RRB money are 1-year RECs, either utility scale or otherwise, from Illinois or other states. The economics of projects that will submit RECs for this solicitation, which will necessarily be existing systems, as compared to DG RECs are completely different. That being said, ELPC does believe that the IPA should solicit one aggregator to administer the standard offer to < 25 kW projects, as indicated in our comments on the 2013 Plan Model.

Respectfully submitted,



Brad Klein
Senior Attorney
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
T: (312) 795-3746
F: (312) 795-3730
bklein@elpc.org



Sarah Wochos
Co-Legislative Director
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
T: (312) 795-3711
F: (312) 795-3730
swochos@elpc.org



John Paul Jewell
Research Coordinator, Clean Energy Finance Specialist
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
T: (312) 795-3732
F: (312) 795-3730
jjewell@elpc.org