

**COMMENTS REGARDING
THE ILLINOIS POWER AGENCY'S
2013 DRAFT PROCUREMENT PLAN
ON BEHALF OF THE
ILLINOIS COALITION TO ADVANCE RENEWABLE ENERGY**

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The Illinois Coalition to Advance Renewable Energy ("I-CARE" or the "Coalition") appreciates the opportunity to comment on the 2013 Draft Procurement Plan ("Draft Plan") issued by the Illinois Power Agency ("IPA") on August 15, 2012.¹

I.

EXECUTIVE SUMMARY

Renewable energy development in Illinois has been a major success. Not only has it achieved important environmental goals and brought enormous economic development to the State; it has yielded financial benefits to Illinois ratepayers -- by the IPA's estimate, it lowered wholesale energy prices by \$177 million in 2011 alone.

It is in that context that I-CARE offers these comments, the principal purpose of which is to support the IPA's proposal to address a technical glitch in the funding mechanism for the long-term renewable contracts that were approved in 2009 by the IPA and the Illinois Commerce Commission ("ICC") and entered into in 2010 (the "Renewables Contracts"). Under the IPA's proposal, funds collected from statutorily-required Alternative Compliance Payments ("ACP") collected from Retail Electric Suppliers and held in the IPA's Renewable Energy Resources Fund ("RER Fund") as well as ACP funds collected and held by the utilities (collectively, the "Funds") would be used, as necessary, to ensure that the obligations under the Renewables Contracts to

¹ I-CARE's members, as described more fully herein, are leading supporters of renewable energy projects in Illinois, nationally, and internationally. I-CARE's members include ACCIONA Energy North America Corporation; EDP Renewables North America LLC; Iberdrola Renewables, LLC; Invenenergy LLC; and NextEra Energy Resources, LLC. These Comments represent the position of I-CARE as a coalition but may not represent the views of any particular member of I-CARE.

supply renewable energy credits (“RECs”) are honored and remain in place. (See Draft Plan at 3, 76-82.)

A. I-CARE Supports The IPA's Proposal To Address The Technical Funding Issue

I-CARE applauds the IPA for advancing a thoughtful and creative solution to provide for uninterrupted funding of the Renewables Contracts. The IPA's proposal would use the Funds that are specifically designated for encouraging renewable energy to avoid a result that could adversely affect the Illinois Renewable Portfolio Standard ("RPS") and undercut Illinois' standing as a national leader in renewable energy policy, development, and deployment. The IPA's proposal is an appropriate technical fix to an issue that results from the success of two important public policy initiatives: (1) the Illinois RPS, and (2) the expansion of municipal aggregation of electricity throughout the State.

B. The IPA Proposal Would Avoid An Unintended Adverse Impact Upon The Illinois RPS And The Green Economy In Illinois

Illinois has enjoyed enormous success with respect to its RPS and the associated expansion of renewable energy projects, as well as related service and supply chain companies throughout the State. As a national leader in renewable energy, Illinois has exemplified the successful combination of clear government policymaking supporting renewables with robust private-sector renewables development and deployment. The result of aggressive but achievable policies has been ratepayer savings, thousands of Illinois jobs, new economic activity for multiple sectors of the Illinois economy -- from manufacturing to farming -- and tremendous growth in the deployment of Illinois renewable facilities.

Those successes and the advancement of the worthy social and environmental policy goals embodied by the expansion of renewable energy in Illinois could be negatively impacted by an unintended technicality in the funding mechanism for renewables and its interaction with

retail shopping. This situation results primarily from unanticipated market developments that have the potential to influence the financial mechanics of the previously-approved Renewables Contracts that are the foundation of the Illinois renewables success story.

After the Renewables Contracts were approved and executed, new rules facilitating residential customer switching were implemented. Those rules increased the number of customers who switched to purchasing electric supply from a Retail Electric Supplier ("RES") rather than from a public utility. This customer switching has been yet another Illinois success story.

Almost simultaneously, and again after the Renewables Contracts were approved, a new law allowing municipal aggregation of electric load went into effect. Under that law, a municipality may, after passage of a referendum, implement a program under which one RES provides electric service to all municipal residents who do not affirmatively "opt-out" of the program. During 2011 and 2012, hundreds of Illinois municipalities implemented municipal aggregation plans. This has resulted in an exponential growth in customer switching, materially and rapidly changing the landscape of the Illinois electric market. According to the ICC's Office of Retail Market Development, over 800,000 residential customers (nearly 20%) had switched to a RES as of July 31, 2012. (*See* <http://pluginillinois.org/default.aspx>) Again, the large-scale switching associated with municipal aggregation is an Illinois energy success story.

Customer switching is now expected to continue at high levels through both individual customer and aggregated load switching, although the degree to which future switching will occur remains unknown -- this is particularly the case as the City of Chicago (with a population of well over 2.5 million people) will hold a referendum vote on its municipal aggregation program in November.

The unanticipated substantial growth in customer switching levels occurring since the 2010 approval and execution of the Renewable Contracts could weaken the stable funding source that is being used to pay for the existing Renewables Contracts. This is because as more customers switch, the pool of customers that determine the amount of funding directly dedicated to the Renewables Contracts is shrinking. As the IPA observes, this challenge is not unlike investments made by conventional generators in the pre-restructuring regulatory regime, who were then able to recover their stranded costs, based on a recognition that regulation had changed the value proposition under which they originally invested. (*See* Draft Plan at 81. *See also* 220 ILCS 5/16-111.5(l).) While the situation with Renewable Contracts is not exactly analogous, it demonstrates that Illinois policymakers have, in the past, recognized that investments made under one regulatory regime, and compromised by a regulatory change, must be made whole.

If this situation is not addressed, it is possible that the Renewables Contracts would be impaired or terminated, which would run directly counter to the Illinois public policy favoring renewable energy. Impairment or cancellation of these contracts would also eliminate one of renewable energy's essential values – acting as a long-term hedge against price volatility. Wholesale energy prices are low today, but the Renewables Contracts were initially proposed and approved as a hedge against rising future power costs. (*See* ICC Docket No. 09-0373, Dec. 28, 2009 Order at 48, 115.) To maintain this benefit, it is essential that the financial mechanics of these contracts operate as intended.

C. The IPA Has Proposed A Common Sense Solution To Address This Unintended Technical Funding Issue

The IPA's Draft Plan correctly identifies the threat to the Renewables Contracts posed by the unanticipated customer switching level that has occurred since those contracts were approved (and that will likely continue into the foreseeable future). Accordingly, the IPA has proposed a framework to address this situation. The IPA proposes that the Funds be used to bridge any funding gap for the RECs procured under the Renewables Contracts previously approved and now in place.

The IPA proposal makes sense. It would use money already collected for the express purpose of procuring renewable energy to ensure that previously-signed Renewables Contracts remain in place. The IPA proposal would not require imposition of any new or additional charges, taxes, or other costs to electric ratepayers, RESs, or public utilities. Nor would the IPA proposal have any effect on the right of the utilities to fully recover their costs. Thus, while the details of the IPA Plan need additional attention, the proposal to use the Funds to avoid a glitch in the financial mechanism supporting the Renewables Contracts is both appropriate and necessary.

The IPA supports a negotiation of interested stakeholders, akin to the type of workshop process that occurs regularly in ICC-related matters. (*See* Draft Plan at 82.) I-CARE supports a workshop approach, provided that it occurs on an expedited basis in order to formulate and implement quickly a straightforward and efficient solution. One concept that seems to merit additional consideration is a structure under which the IPA would act as a "backstop" in the event of a short-fall in the funds to be paid from the utilities to the sellers under the Renewables Contracts. Having the IPA step into the shoes of the utilities to the extent that there is a shortfall would be entirely consistent with the IPA's statutory mandate to administer the RER Fund "to

procure renewable energy resources." (20 ILCS 3855/1-56(b).) Likewise, it would be entirely consistent with the IPA Act's recognition that the IPA's support of renewable energy resources shall include "long-term contracts." (20 ILCS 3855/1-56(c).) There is no legal impediment to the IPA applying the RER Fund for such a use -- and the IPA Act is explicit that the Illinois Procurement Code does not restrict the use of the RER Fund, reducing the bureaucracy associated with use of that money. (See 20 ILCS 3855/1-56(f).) Similarly, there would be no legal impediment to applying the utility-held ACP Funds to cover costs associated with the long-term renewable energy contracts. (See 20 ILCS 3855/1-75(c)(5).)

Regardless of the ultimate details of any solution, it is clear that a mechanism for expedited relief should be in place before any short-fall in funds occurs. The Renewables Contracts already require action by the ICC before any pro-rata reduction of payments to the renewable providers could occur. Therefore it appears that the ICC and the IPA need merely set forth a coordinated structure to further detail the process by which a viable mechanism for coordinated regulatory oversight and action would be implemented.

Consistent with the IPA's proposal, I-CARE supports a coordinated effort of stakeholders to finalize details and resolve any points of disagreement in an expedited workshop format.

D. I-CARE's Members Have Helped Make The Illinois Renewables Policy A Success Story

I-CARE includes renewables companies that have been an integral part of the Illinois success story and wish to see Illinois continue as a national leader in renewable policy and development. I-CARE includes the following companies and organizations:

ACCIONA Energy North America Corporation

ACCIONA Energy North America Corporation ("ACCIONA") is a subsidiary of ACCIONA Energy, a global operator in clean energies with over 20 years of experience in the sector and a strong presence in seven renewable technologies. It has installed 9,766 MW of clean electricity generation, of which it owns 8,211 MW located in 13 countries. The company owns and operates 225 wind parks (6,921 MW), 80 small hydro plants (912 MW), 5 concentrating solar power plants (264 MW), one of the biggest photovoltaic plants in the world (46 MW_p) and three biomass plants (57 MW). It produces wind turbines using proprietary technology and has biodiesel and bioethanol production facilities.

ACCIONA has offices in Chicago, IL, Boulder City, NV, and Toronto, ON, and over 300 employees. ACCIONA owns and operates over 900 MW of renewable energy projects in the US and Canada, including the **100.5 MW EcoGrove wind farm in Stephenson County, Illinois.**

EDP Renewables North America LLC

EDP Renewables North America LLC ("EDPRNA") and its subsidiaries develop, construct, own, and operate wind farms throughout North America. Based in Houston, Texas with 28 wind farms and over 10 offices across the United States and Canada, EDPRNA has developed more than 3,800 MW and operates over 3,600 MW of wind farms. EDPRNA has approximately 300 employees. EDPRNA is owned by EDP Renováveis, S.A. ("EDP Renewables"), a global leader in the renewable energy sector that develops, constructs, owns, and operates renewable generation facilities throughout Europe and South America.

EDPR has invested over \$3 billion in Illinois and neighboring states since 2007. These projects include **five wind farms in Illinois**, in McLean, Tazewell, Logan, LaSalle, and Grundy counties **with a combined capacity of 796.5 MW**, as well as seven wind farms in Indiana and Iowa with a combined capacity of 900MW.

Iberdrola Renewables

Iberdrola Renewables is part of Iberdrola S.A., an energy pioneer with the largest renewable asset base of any company in the world – over 14,000 megawatts (MW) of renewable energy spread across 23 companies. Iberdrola Renewables is the second-largest wind operator in the U.S. with more than 5,200 MW in operation or under contract – 38 percent of Iberdrola's global capacity. The company has over \$9 billion of operating assets at more than 50 operating plants in the U.S. In Illinois, Iberdrola Renewables owns and operates two wind farms totaling 372 MW with additional projects under development.

Invenergy LLC

Chicago-based Invenergy is committed to innovation in the energy sector. Invenergy develops, owns, and operates power generation facilities in North America and Europe, and has a proven track record in establishing and maintaining longstanding, profitable relationships with utilities, suppliers, and the communities in which its projects are located.

Invenergy has developed over 6,600 MW of utility-scale renewable and natural gas-fueled power generation facilities, including more than 5,300 MW of projects in operation, and more than 1,300 MW under contract or in construction, **including over 600 MW under construction or in operation in Illinois**. In addition, in 2012, Invenergy completed the 20 MW Grand Ridge Solar project in LaSalle County, **the largest solar project in Illinois**. Invenergy is North America's largest independent wind power generation company and a leading force in power supply diversification.

NextEra Energy Resources, LLC

NextEra Energy Resources ("NEER") stands out as a leader in producing electricity from clean and renewable resources. NEER is the largest wind generator in North America with approximately 90 wind facilities in operation in North America and Canada capable of producing over 8,700 MW of net MW of electricity. NEER is headquartered in Juno Beach, Florida with over approximately 4,700 employees. NEER's portfolio of generating facilities contains over 16,600 net MW of generating capacity in 23 U.S. states and three Canadian provinces. In addition to wind energy, NEER assets include natural gas, nuclear, solar, and hydroelectric generators.

NEER owns two wind facilities in Illinois, which are operated by NEER subsidiaries. The Lee/DeKalb Wind Energy Center is a **217.5 MW** wind generation plant located in Lee and DeKalb counties. It began commercial operation in 2009. NEER's other facility in Illinois is the White Oak Wind Energy Center, a **150 MW** wind generation located in McLean County that began commercial operation in 2011.

As I-CARE's membership demonstrates, Illinois has attracted many of the world's leading renewables developers. These companies, with the help of Illinois labor and Illinois renewable organizations, working in concert with Illinois governmental agencies and Illinois' sophisticated community of energy-related non-governmental organizations, have helped write the Illinois

renewable success story. That story is now threatened by a technical funding issue that the IPA's proposal is designed to address, without any increases in costs to ratepayers or stakeholders.

The IPA's proposal is fair and appropriate and steps should be taken immediately to implement it. The IPA has offered an important proposal to bridge a gap that could occur in the funding of REC procurements under the Renewables Contracts as a result of unforeseen, large scale customer migration. The funds that would be used are specifically designated for use in procuring RECs. It is both legal and entirely sensible for the interested parties to negotiate a mechanism that can preserve the Renewables Contracts in a way that will not increase costs to customers or any stakeholder and will preserve Illinois' standing as a leader in renewable energy.

II.

ILLINOIS CURRENTLY IS A RENEWABLE ENERGY SUCCESS STORY

Illinois is a well-recognized renewable energy success story. The success in Illinois stems both from the unambiguous governmental support of renewable energy policies and the robust private sector development of renewable energy facilities in the State.

Like nearly 30 other states, Illinois has a Renewable Portfolio Standard ("RPS"). In August 2007, the General Assembly enacted the Illinois Power Agency Act ("IPA Act"). (*See* 20 ILCS 3855/1-1 - 99-99.) In addition to establishing a new administrative agency to run procurements of electricity for those customers obtaining electricity from the utilities, the IPA Act also established the Illinois RPS. (*See* 20 ILCS 3855/1-75(c).) The RPS set an escalating requirement for procurement of renewable sources of electricity, starting at 2% in 2008 and moving progressively up to 25% by 2025. (*See id.*) The IPA Act requires that 75% of the RPS be met from wind generation, with an additional specified percentage coming from photovoltaics (.5% in 2012 rising to 6% by 2015). (*See id.*) The IPA Act permits the IPA to meet the RPS by

procuring either bundled products (i.e., renewable power and its associated renewable energy credits) or renewable energy credits only. (See definition of "Renewable energy resources" at 20 ILCS 3855/1-10.) The IPA Act also includes a mechanism to limit customer impacts associated with the procurement of renewables. (See 20 ILCS 3855/1-75(c).)

Originally, the RPS applied only to public utilities. However, in 2008 the Illinois Public Utilities Act was amended to impose a RPS on alternative retail electric suppliers and electric utilities operating outside their service territories (collectively, "RESs"). (See 220 ILCS 5/16-115D.) This effectively doubled the size and impact of the Illinois RPS. (See ISU Illinois RPS History at 14.) The RPS applicable to RESs largely mirrors the requirements applicable to the public utilities (through the IPA) under the IPA Act, although the wind requirement for RESs is only 60% rather than the 75% applicable under the IPA Act.

There is one major difference, however. That exception requires that rather than directly procure renewable energy resources, each RES *must* meet *at least* 50% of its annual RPS requirement by making an "Alternative Compliance Payment" ("ACP") into the IPA's RER Fund. (See (220 ILCS 5/16-115D(b).) That money shall be used by the IPA "to purchase renewable energy credits" in accordance with the IPA Act. (220 ILCS 5/16-115D(d)(4).) A similar ACP mechanism applies to "hourly pricing" customers of ComEd and Ameren, though in that instance, the utilities themselves collect and hold the ACP Funds. (See 20 ILCS 3855/1-75(c)(5).) Thus, both the RERF and the ACP Funds provide an additional funding source for REC procurement.

The RPS has been an important tool in diversifying the generation sources for Illinois electricity and jumpstarting the "green" economy in the State. In the first decade of the 21st century, Illinois went from having zero MW of wind energy to over 2,000 MW. (See "The

Illinois RPS: Context Structure and History of the Policy" at 6, April 2011, Center for Renewable Energy, Illinois State University. (hereafter "ISU Illinois RPS History".) The RPS has spurred the Illinois renewables industry, and at the same time, the Illinois renewables industry has made fulfillment of the RPS a reality. (See "Economic Impact: Wind Energy Development in Illinois" at 6, June 2012, Center for Renewable Energy, Illinois State University. (hereafter "ISU Illinois RPS Economic Impact Study") ("One key policy driver in Illinois was the passage of the Illinois Power Agency Act in 2007 which included a Renewable Portfolio Standard of 25% by 2025, of which 75% of the renewable energy resources must come from wind.".) The benefits of this dynamic have been enormous.

Economic growth associated with the development and deployment of renewables in Illinois since the passage of the RPS is now well established. Between 2003 and 2006, Illinois wind power was stagnant -- in 2004 and 2006 there was essentially no capacity added in Illinois. (See ISU Illinois RPS Economic Impact Study at 12; see also "The Clean Energy Supply Chain in Illinois: Wind, Solar and Geothermal" at 1, July 2011, Environmental Law & Policy Center (hereafter "ELPC Economic Impact Study".) Then, beginning in 2007, the development of wind projects in Illinois exploded, with an over 1,300% increase in additional capacity *in one year* over the total cumulative capacity existing in 2006. (See *id.*) Since then, development has continued each year at a high rate, with new development annually that is multiples of the total cumulative capacity that existed in 2006, with a 300% increase in capacity since 2007. (See *id.*) The trend continued in fiscal 2012 with over 900 MW installed in Illinois -- a new record. (See ISU Illinois RPS Economic Impact Study at 12.)

In short, since its introduction in 2007, the RPS has helped lead over 3,300 MW of Illinois wind development -- Illinois now ranks 4th in the United States in overall installed wind

capacity, even though the State is ranked only 14th in potential capacity. (*See id.* At 6.) In 2011 Illinois installed 404 new turbines -- the most in the nation. (*See id.*) The impact is significant.

The ISU Illinois RPS Economic Impact Study reports that the 23 largest wind farms in Illinois:

- Created over 19,000 full time construction jobs with a payroll of over \$1.1 billion.
- Support over 800 permanent jobs in rural Illinois with an annual payroll of nearly \$48 million.
- Support local economies by generating \$28.5 million in annual property taxes.
- Generate \$13 million annually in extra income for Illinois landowners who lease land to wind developers.²
- Will generate a total economic benefit of **\$5.98 billion** over the life of the projects.

(*See id.*)

Those direct benefits are supplemented by enormous indirect economic benefits. The Chicago area is now *the* leading hub for national and international wind, solar, and other renewables companies. Over a dozen companies are now headquartered in and around Chicago, more than in any other U.S. City. (*See* ELPC Economic Impact Study at 7-8.) Further, today Illinois is home to *several hundred* companies that form the supply and service chains for wind, solar, geothermal, and other renewable energy developers. (*See id.* at 4-6, 9-15.)

There are other benefits as well. Perhaps least known is ratepayer savings due to price suppression. The IPA reports that **renewable energy resources played a "dramatic role in**

² "Landowners who lease their land to wind developers benefit from having a stable source of income. On a per acre basis, the revenue landowners receive from leasing their land is usually greater than that from ranching or farming and it does not require any work from the landowners. In some cases wind turbines are able to be located on land that was not able to be farmed. This gives productivity to unusable land." (*See id.* at 18.)

reducing electric energy prices in Illinois" -- lowering wholesale electricity prices by \$177 million in 2011. (IPA "Annual Report: The Costs and Benefits of Renewable Resource Procurement in Illinois Under the Illinois Power Agency and Illinois Public Utilities Acts" at 3, March 30, 2012 (emphasis added).) This fact undercuts the recurring message from some quarters that renewables are not economically useful.

In short, the economic benefits associated with development and deployment of renewables in Illinois -- both upstate and downstate -- are substantial. Illinois public policy on renewables, and particularly the motivation provided by the RPS, has been a critical component in this Illinois success story. The Coalition wishes to see the future chapters of the Illinois success story unfold. The IPA's plan to use the Funds to assist with funding the procurement of RECs under the Renewables Contracts will help ensure that happens.

III.

BACKGROUND ON THE IPA PLAN AND THE RENEWABLES CONTRACTS

The IPA's 2013 Draft Procurement Plan contains a commonsense proposal to use ACP money already collected for the specific statutory purpose of supporting renewable energy contracts previously approved by the both IPA and the ICC. The proposal is consistent with the statutory framework set out in the IPA Act.

A. Statutory Background

Under the IPA Act, the IPA has a number of responsibilities, including the development and implementation of energy procurement plans, which must comply with the Illinois RPS discussed above, and the administration of the RER Fund (20 ILCS 3855/1-75, 1-56; *see also* 220 ILCS 15-111.5.) The IPA Act also requires the utilities to collect ACP Funds from their hourly pricing customers. (*See* 20 ILCS 3855/1-75(c)(5).)

The RER Fund is "a special fund in the State treasury" which "shall be administered by the [IPA] to procure renewable energy resources." (20 ILCS 2855/1-56(a), (b).) The RER Fund must be used to acquire renewable energy resources using the same source percentages (i.e., 75% wind; 6% photovoltaic by 2015) as the IPA Act's general RPS requirement applicable to the procurement plans. (*See id.*)

The IPA Act contains some guidance regarding the use of the RER Fund. For example, it indicates that the price paid for RECs using the RERF fund "shall not exceed the winning bid prices paid for like resources procured for electric utilities" under the procurement section of the Act. (20 ILCS 3855/1-56(d).) RECs procured using RERF fund money "shall be permanently retired." (20 ILCS 3855/1-56(e).) And the procurement process described in the RER Fund section of the IPA Act "is exempt from the requirements of the Illinois Procurement Code." (20 ILCS 3855/1-56(f).)

B. The 2010 IPA Procurement Plan

On September 30, 2009, the IPA filed its 2010 Procurement Plan with the ICC, initiating ICC Docket No. 09-0373. The IPA's 2010 Plan included a proposal for long-term contracts for renewables. There was considerable interest from stakeholders and the ICC proceeding included a relatively voluminous record of filings commenting on the long-term contracts issue. The proceeding included the filing by the IPA on November 9, 2009 containing a revised proposal clarifying the IPA's intentions regarding the long-term renewables contracts.

The IPA's November 9, 2009 revised proposal assuaged concerns that had been expressed by many of the parties regarding the long-term contracts. (*See* ICC Docket No. 09-0373, Dec. 28, 2009 Order at 115 ("The Commission believes that the proposed modifications filed by the IPA on November 9, 2009 ... simplify and clarify the IPA's proposal to acquire long-term

renewable resources, and they appear to satisfy or at least mitigate many of the concerns raised by various Parties in earlier filings. In that regard, ComEd, Ameren Illinois Utilities and the AG all support approval of those recommendations, and Staff does not object to them.".)

On December 28, 2009, the ICC approved the IPA's 2010 procurement plan, as modified by the IPA's November 9, 2009 filing regarding the long-term contracts. (*See id.*) The ICC noted that there were some unresolved issues relating to the contract, but emphasized the need for flexibility and cooperation among the interested parties in implementing the details:

As the parties recognize, some details of the contracts will be left for the implementation process, as is normally the case in the acquisition process under the current statutory scheme.

(*Id.* at 117.)

The ICC Order approving the IPA's 2010 plan did not directly address the issue now presented by the IPA proposal to use the Funds to address a reduction in the direct funding of the Renewable Contracts resulting from substantial customer switching. The ICC noted, however, that there was some discussion by certain parties suggesting that the ACP Funds could be used "to create a fund for 'premiums' for long term contracts without further increasing the costs and price risks to eligible customers." (*Id.* at 111, describing filings made by the Illinois Competitive Energy Association ("ICEA").) Although the ICC did address certain of ICEA's objections, the ICC did not express a disagreement with the point that ICEA made about the various ways in which the ACP Funds could be used. (*See id.* at 119-20.)

IV.

THE UNANTICIPATED SUCCESS OF CUSTOMER SWITCHING COULD ADVERSELY AFFECT THE ILLINOIS RENEWABLE ENERGY SUCCESS STORY

Since the ICC approved the IPA's 2010 Procurement Plan and the utilities entered into the Renewables Contracts, there have been a number of significant developments in the Illinois competitive market. These developments have created an issue concerning the way in which the funding mechanism operates to pay for the Renewables Contracts. The IPA's current proposal will address that issue without increasing costs to any stakeholder or putting the utilities at risk of not being paid.

A. The Market Structure In December 2010 Provided A Stable Funding Source

In December 2010, when the IPA and ICC approved a set of long-term renewables contracts as part of the IPA's statutorily-required Procurement Plan, only a tiny fraction of Illinois residential electric customer obtained their electricity from a RES. (*See* ISU Illinois RPS History at 8 (showing that as of August 31, 2010, only 742 -- .0166% -- of Illinois' 4.479 million residential customers took service from a RES).) The other 99.98% of Illinois residential electric customers obtained their power from the public utilities, as they always had. Under the funding structure in the Public Utilities Act in place at that time, the large, stable pool of residential customers taking service from the public utilities established a dependable source for long-term funding for the Renewables Contracts. That level of near-zero switching continued through the first quarter of 2011. (*See* ICC Office of Retail Market Development 2012 Annual Report ("ORMD 2012 Report") at 16-18. *See also* <http://pluginillinois.org/default.aspx>.)

B. After 2010, The Illinois Retail Electric Market Structure Changed Unexpectedly And Dramatically

After those Renewables Contracts were approved and executed, however, new rules facilitating residential customer switching were implemented. Those rules increased the attractiveness of the Illinois residential customer market to RESs. In particular, the implementation of Utility Consolidated Billing ("UCB") and Purchase of Receivables ("POR") programs made the residential market much more attractive to RESs. (*See* ICC Office of Retail Market Development 2011 Annual Report ("ORMD 2011 Report") at 16 (describing the positive competitive market effects of UCB/POR).) Several RESs began marketing electric supply to residential customers, and significant numbers of customers began to switch, purchasing electric supply a RES rather than from a public utility. (*See id.*)

At the same time, once again after the Renewables Contracts were approved, a new law amending the IPA Act and allowing municipal aggregation of electric load went into effect. (*See* 20 ILCS 3855/1-92.) Under that law, a municipality may, after passage of a referendum, implement a program under which one RES provides electric service to all residents who do not affirmatively "opt-out" of the program. Municipal aggregation activity began in 2011; however, it was during 2012 that "[m]unicipal aggregation activity increased dramatically," with 245 communities passing a municipal aggregation referendum. (*See* 2012 ORMD Report at 30. *See also* <http://www.pluginillinois.org/MunicipalAggregationList.aspx>.) Numerous communities have pressed forward with municipal aggregation plans and selected RESs to serve the aggregated load. This has resulted in additional, substantial customer switching.

The combination of individual switching and aggregated load switching materially and rapidly changed the landscape of the Illinois electric market. The ICC's Office of Retail Market Development reports that 802,147 residential customers had switched to a RES as of July 31,

2012. (See <http://pluginillinois.org/default.aspx>) Thus, in the span of about eighteen months residential customer switching jumped from virtually zero to nearly 20%. Residential customer switching is expected to continue at high levels through both individual customer and aggregated load switching, although the degree to which future switching will occur remains unknown -- this is particularly the case as the City of Chicago will hold a referendum vote on a municipal aggregation program in November.³

**C. The Unexpected High Level Of Customer Switching Impacts
The Stability Of The Funding Source For The Renewables Contracts**

In December 2010, when the IPA and ICC approved the Renewables Contracts, the large, stable pool of residential customers taking service from the public utilities established a dependable source for long-term funding the Renewables Contracts; over 99.98% of Illinois' residential electric customers obtained their power from the public utilities. (See ISU Illinois RPS History at 8.) The substantial customer switching levels occurring since the regulatory approval and execution of the Renewables Contracts was not anticipated by any market participant. As recently as last year, the switching level that is now apparent was not forecasted by the utilities. (See IPA Draft Plan at 11-20.)

The high level of recent customer switching threatens to diminish the stability of the funding source that is being used to pay for the RECs procured under the Renewables Contracts.

The Draft Plan notes:

³ It is possible that if the City of Chicago proceeds with a municipal aggregation program, that program could be designed in a manner that would embrace the long-term development of renewable energy in Illinois and facilitate an additional or different solution to the funding source issue created by large-scale customer switching. I-CARE encourages the City of Chicago to participate actively in workshops and other discussions to explore how its municipal aggregation program might afford an opportunity to provide further assurance that the Illinois RPS will remain viable and robust.

The long-term bundled REC and energy purchased made in 2010, before there was a practical appreciation of how quickly and successfully customers would choose alternative electricity suppliers, are becoming a new generation of stranded costs.

(*Id.* at 81.) The bottom line is that unanticipated large-scale customer switching -- no doubt, a success story about the competitive market and great for Illinois ratepayers -- has materially changed the landscape of the Illinois electric market in a manner that creates a technical funding issue for the Renewables Contracts.

An expedited solution to this issue is required to ensure that both the Illinois RPS and the success of the competitive market can advance -- the IPA has proposed a workable framework for that solution.

V.

THE IPA HAS PROPOSED A COMMON SENSE SOLUTION TO AVOID AN UNINTENDED RESULT

The IPA proposes that money currently held by the IPA in its RER Fund, along with the ACP money collected by the utilities, be used to bridge any funding gap for the Renewables Contracts previously approved and now in place. The proposal makes sense and is consistent with the law.

A. Use Of The Funds To Bridge Any Funding Gap Is Appropriate

The IPA proposes to use money already collected for the express purpose of encouraging renewable energy to make sure that the previously-signed Renewables Contracts remain in place. (*See* IPA Draft Plan at 79-82.) The IPA proposal would not require imposition of any new or additional charges, taxes, or other costs to electric ratepayers, RESs, or public utilities. Nor would the IPA proposal have any effect on the ability of the utilities to recover their costs, which is secure under the law. (*See* 220 ILCS 5/16-111.5(l).) Thus, while the details of the IPA Plan likely need additional attention, the proposal to use the Funds to address the unanticipated glitch

in the funding mechanism for REC purchases pursuant to the Renewables Contracts is both appropriate and necessary.

As discussed above, the IPA is specifically charged with administering the RER Fund "to procure renewable energy resources." (20 ILCS 3855/1-56(b).) There is no question that the Renewables Contracts entered into in December 2010 are for renewable energy resources as defined in the IPA Act. Nor is there any question that under the IPA's proposal the "price" to be paid would "not exceed the winning bid prices paid for like resources procured for electric utilities," since the "price" would be identical to whatever price the utility would have paid if there were not a problem with the funding mechanism. (20 ILCS 3855/1-56(d).)

**B. The IPA's Proposal Is Legal And Sensible
And Supports Illinois' Leadership On Renewables**

The IPA proposal makes sense. It would use money that was collected for the express purpose of buying renewable energy resources to do just that. There is no legal impediment to the IPA using the ACP money held in the RER Fund to buy those resources. Those funds are administered by the IPA, which has broad legal authority and powers "necessary or convenient to carry out the purposes and provisions of" the IPA Act. (20 ILCS 3855/1-20(b).) If particular agreements with stakeholders are required to execute the IPA's proposal, it again possesses requisite authority to "make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the Agency under" the IPA Act. (20 ILCS 3855/1-20(b)(9).)

Nor is there any public policy impediment to the IPA's proposal. On the contrary, the State of Illinois' public policy strongly favors the development and deployment of renewable energy resources. As discussed herein, the State of Illinois has established itself as a national leader in renewables. This has served its intended environmental purpose well, but it has also

brought ratepayer savings and substantial economic development to the State, and has established Illinois as a model state for renewables development.

Finally, implementation of the IPA's proposal would have no detrimental effect on Illinois ratepayers, Illinois public utilities, RESs, or any other stakeholder. The ACP money has already been collected by the IPA and the utilities pursuant to State law for the purpose of supporting renewables. Its use for that purpose in the IPA's proposal will not result in a "higher" future ACP levy for ratepayers. Similarly, using the Funds will not threaten the utilities' ability to obtain full cost recovery associated with its purchase of renewables, which is plainly protected by statute. (*See* 220 ILCS 5/111.5(1).) Likewise, using the ACP money will not adversely affect the RESs or the competitive retail electric market; the Funds already have been collected, and their use of the purpose proposed by the IPA would not change that fact or change the calculation methodology of future ACP collections.

The IPA proposal will help ensure Illinois' leadership position in renewables energy industry. Furthermore, the IPA Proposal will avoid disruption of significant long-term renewables contracts resulting from an unintended, technical funding point, and thus will send a message to the lending community that Illinois remains a reliable market for renewables projects. Both historically and recently, this concern has been implicated by developments in the Illinois energy world. The IPA plan offers a tenable, feasible solution to an issue that will avoid sending a negative message about the Illinois renewables business climate.

C. The IPA Proposal Does Not Require ICC Approval At This Time

The IPA Draft Report indicates that the IPA's proposal to use the Funds to avoid potential problem with the funding mechanism to procure the RECs under the Renewables Contracts does not require additional ICC review in conjunction with the ICC's approval of the IPA's 2013 Procurement Plan. (See IPA Draft Plan at 81-82.)⁴ That is correct. The IPA Act does not afford to the ICC any authority over the ACP Funds or the RER Fund. (See 20 ILCS 3855/1-56). Nor does the Public Utilities Act afford the ICC authority over the use of ACP money or the RER Fund in connection with the ICC's review and approval of the IPA's procurement plan. (See 220 ILCS 5/16-111.5.)

Although ICC approval of the IPA proposal is not required now, it is likely that the ICC will have a regulatory role in the event that there is a shortfall in funds associated with the RECs procured under the Renewables Contracts. That is because of the language of the Renewables Contracts themselves contemplates ICC involvement in the event of a funding shortfall:

Unless otherwise required by law, statute or order, rule or decision of the Illinois Commerce Commission, Buyer will not refuse to pay for any Product delivered by Seller for the sole reason that payment for Product would cause the cost caps provided for in Section 1-75(c)(2) of the Illinois Power Agency Act (20 ILCS 3855/1-75(c)(2)) to be exceeded. In the event that Buyer is not allowed to recover costs as a result of any of the above actions, the following additional conditions shall apply: 1) Buyer shall inform Seller as soon as practical of the law, statute or order, rule or decision of the Illinois Commerce Commission limiting costs

⁴ On page 3 of the IPA's Draft Plan the last sentence of the first full paragraph indicates that "Upon Commission approval of this Procurement Plan, the IPA commits to work with Ameren, ComEd and the long-term renewable resource suppliers to effect a practical methodology to make this work within the confines of the existing PUA and IPA Act." (Emphasis added.) That sentence, contrary to the statements on pages 81-82, seem to suggest that the ICC has approval authority over the use of the ACP Funds in the RER Fund. To the extent that this reference was suggesting that the IPA would wait until after the ICC issues an Order regarding the Procurement Plan to work with stakeholders, such a suggestion ignores the need to expeditiously develop and implement a solution. It would be prudent for the IPA to consider modifying the language in the sentence on page 3 to clarify its understanding of the scope of ICC review and to underscore the importance of initiating a workshop process immediately.

recovery; 2) unless otherwise directed by the Illinois Commerce Commission or statute, Buyer shall reduce the quantity of Product purchased under all contracts for renewable energy resources that allow for pro-ration in this circumstance and that are effective and in force at the time by reducing proportionately for each contract the Annual Contract Quantity or similar contract term as required such that the amount of expenditures for Product are recoverable;...

(Section D "Payment Obligations" of the "Additional Provisions" to the Sample Confirmation to the Renewables Contracts form contract.)⁵ This provision contemplates that *before* a public utility would stop making full payments under the contract because of a problem with the funding, the utility would go before the ICC, either to obtain ICC approval to pay less than the full amount due under the contract, or to obtain some other clarification of the parties' rights. Accordingly, should a situation arise with regards to the funding of the Renewables Contracts, the ICC will be called upon to exercise its authority to the extent applicable.

VI.

THE MECHANISM TO IMPLEMENT THE IPA PROPOSAL SHOULD BE FURTHER DEFINED

The IPA Draft Plan does not specify the precise mechanism that the IPA would use to procure the RECs under the Renewable Contracts, but indicates that those procurement costs could be covered with previously-collected money that currently is being held either by the IPA in the RER Fund or by the utilities. The IPA supports a negotiation of interested stakeholders, akin to the type of workshop process that occurs regularly in ICC-related matters. (*See* Draft Plan at 82.) I-CARE supports a workshop approach, provided that it occurs on an expedited basis in order to reach a solution quickly.

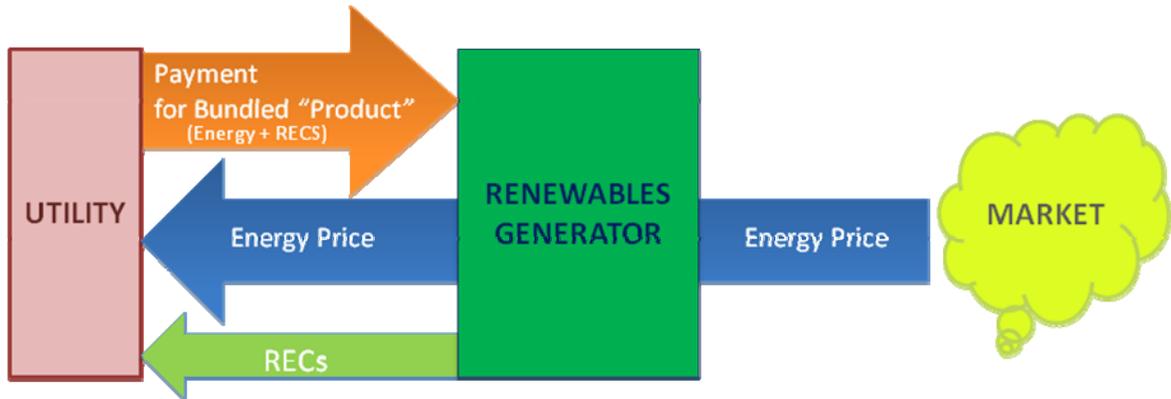
⁵ The language in the specific Renewables Contracts, while not identical, is substantively the same with respect to this provision.

A. The IPA Should Act As A "Backstop" To Prevent Any Instability In The Funding Source

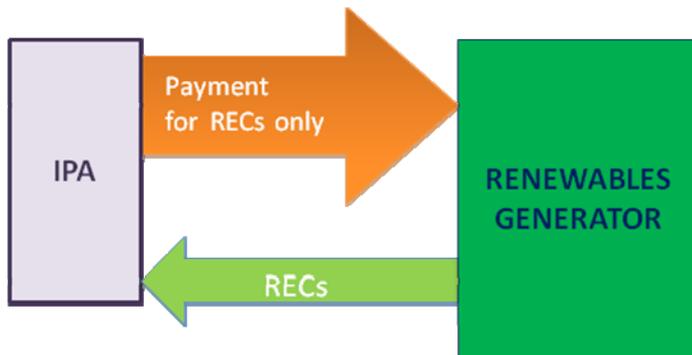
The solution to the problem with the funding source should avoid interposing additional unnecessary complexity, and should be formulated to be as straightforward and efficient as possible. Thus, it appears that the best approach would be a structure in which the IPA acts as a "backstop" in the event of a short-fall in the funds to be paid from the utilities to the sellers of RECs procured under the Renewable Contracts. Under the Renewables Contracts, the utilities pay a variable formula price for RECs, calculated by taking the flat rate per megawatt-hour set in the Renewables Contracts and subtracting the day-ahead price for electricity (that is, the day-ahead electricity price is merely a pass-through for the seller). If and when the Renewables Contracts are curtailed by the utilities (which is to occur on a pro-rata basis pursuant to a future ICC Order), the IPA could merely step into the shoes of the utilities and purchase the RECs at the exact same formula price, while avoiding the unnecessary step of having the seller pass through the day-ahead electricity price. This structure would avoid multiple levels of contracts and would permit the IPA to use the Funds in a manner consistent with their intended use under the IPA Act, as demonstrated in the following graphic.

STRUCTURE OF THE IPA "BACKSTOP" CONTRACT

EXISTING RENEWABLES CONTRACTS WITH UTILITY



POST-CURTAILMENT CONTRACT WITH IPA



CALCULATION OF THE REC PRICE

$$\text{REC Price} = \text{Flat Rate in Contract} - \text{Variable Day-Ahead Energy Price}$$

Note: The same formula is used in both contracts to determine the REC Price

This mechanism would be consistent with the IPA's statutory mandate to administer the RER Fund "to procure renewable energy resources." (20 ILCS 3855/1-56(b).) Likewise, it would be entirely consistent with the IPA Act's recognition that the IPA's support of renewable energy resources shall include "long-term contracts." (20 ILCS 3855/1-56(c).) As discussed above, there is no legal impediment to the IPA applying the RER Funds for such a use -- and the IPA Act is explicit that the Illinois Procurement Code is inapplicable to use of the RER Fund. (*See* 20 ILCS 3855/1-56(f).)

B. The IPA Should Convene Workshops Expeditiously

For any alternative funding structure to work, it is clear that the details should be developed on an expedited basis, to ensure that the mechanism can be in place before any shortfall in funds occurs. In this respect, as discussed above, the contracts already require action by the ICC in the event of a shortfall before a pro-rata reduction of payments to the renewable providers could occur, so it appears that a viable mechanism for coordinated regulatory oversight and action already exists. Nevertheless, steps should be taken now to better prepare for the potential ICC proceeding.

I-CARE supports a coordinated effort of stakeholders to finalize details and resolve any points of disagreement in an expedited workshop format. That approach would be consistent with the direction of the ICC at the time it approved the Renewables Contracts, when it recognized the need for some leeway to allow parties to debate and facilitate the implementation of the "details of the contracts." (ICC Docket No. 09-0373, Dec. 28, 2009 Order at 117.)

VII.

CONCLUSION

The IPA has recognized an unintended technical funding issue resulting from the dual successes of the Illinois RPS and competitive market-driven customer switching. The IPA has appropriately offered a thoughtful proposal to bridge a gap that could occur in the funding of IPA- and ICC-approved Renewables Contracts as a result of unforeseen, large scale customer migration. The Funds that would be used are specifically designated for use in procuring RECs -- it is both legal and entirely sensible for the interested parties to negotiate a mechanism that can preserve the Renewables Contracts in a way that will not increase costs to customers or any stakeholder and will preserve Illinois' standing as a leader in renewable energy.

The Illinois Coalition to Advance Renewable Energy appreciates the opportunity to comment on the IPA 2013 Draft Procurement Plan and looks forward to working with stakeholders to ensure that a sensible solution to the funding source issue is developed and implemented in a timely manner.