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Exception #1

VII. Disputed Issues and Commission Conclusions

C. Procurement of Renewable Resources

1. The Proposed Order Didn't Require the Procurement of only Renewable Energy

A number of parties took exception to the legal analysis of the renewable portfolio standard and whether it required the procurement of renewable energy. The Illinois Power Agency (hereafter referred to as "IPA") took exception, to the extent the Proposed Order ("PO") prohibits REC only contracts (IPA BOE 17; *see also* 25-26) and also asserted that the RPS obligations are trumped by the RERB; (IPA BOE 18). The ICC Staff (hereafter referred to as "Staff") stated that the ALJ's statement that "[t]he procurement plans shall be updated on an annual basis and shall include electricity generated from renewable resources sufficient to achieve the standards specified in this Act" (see Section 1-20(a)(1)) in effect removes RECs from the definition of "renewable energy resource." (Staff BOE at 5-6) Commonwealth Edison Company (hereafter referred to as "ComEd") states that the PO incorrectly interprets Section 1-75(c) of the IPA Act as intending that only physical energy be procured (ComEd BOE at 3) and that the PO's interpretation also leads to the unreasonable result of effectively eliminating the procurement of RECs. (ComEd BOE at 4) ComEd also asserts that only the lowest cost plan over time is to be approved. (ComEd BOE at 9) Illinois Competitive Energy Association (hereafter referred to as "ICEA") asserts that the PO should not approve Iberdrola's proposal because the benchmark and caps do not protect Illinois consumers from paying premium prices and will not assure consumers they are paying the lowest cost over time. (ICEA BOE at 11) Retail Energy Supply Association (hereafter referred

to as “RESA”) asserts that the PO misinterprets the law and ignores prior Commission Orders and renders void the economic value of RECs. In addition, RESA asserts that the PO mandates that something other than a REC – actual renewable energy – is mandated for compliance and procurement plan purposes. (RESA BOE at 5-6) Finally, RESA concludes that Iberdrola’s proposal, in today’s environment, would only operate to increase costs to consumers. (RESA BOE at 10) Exelon Generation Company LLC (hereafter referred to as “Exelon”) argues that the reason no party in the first three proceedings interpreted Section 1-20 as requiring the procurement of renewable energy is because that provision does not support such an interpretation. (Exelon BOE at 3) The Attorney General of the State of Illinois (hereafter referred to as “AG”) takes exception to the PO limiting the IPA to purchasing renewable energy. (AG BOE at 3-4)

The PO’s analysis never prohibited REC only contracts, but placed a priority on the procurement of renewable energy ahead of the procurement of RECs. Procuring renewable energy, more so than procuring RECs, fulfills the intent of the renewable portfolio standard portion of the IPA Act – “to support the growth of . . . renewable resources.” (IPA Act, §1-5(4)). As was explained in Wind on the Wires’ Objection, procuring *only* REC’s does not fulfill the purpose of the RPS which is to develop renewable resources. Moreover, it is the clear the PO did not interpret the renewable portfolio standard and the IPA Act to prohibit the procurement of RECs given that the PO approved a plan that included short and mid-term REC procurements (in addition to long term PPAs).

RESA/ICEA/ComEd/Exelon maintain an interpretation that is contrary to the intent of the RPS provision of the IPA Act. They interpret the phrase “lowest total cost

over time” in Section 16-111.5(d)(4) to mean that the lowest cost product is to be procured. That is the test for the procurement of energy other than that procured to meet the renewable portfolio standard of the IPA Act. The lowest total cost is a standard put in place to protect the ratepayer, whereas the cost-effectiveness test (otherwise referred to as the “RERB”) protects ratepayers from unreasonable purchases of renewable resources. On page 80 the PO addresses the lowest cost option arguments and correctly addresses the issue by stating – “The fact that short-term RECs alone may be the least expensive option at the time does not mean that the IPA and the Commission should disregard all other requirements and goals of the IPA Act.” The RPS is intended to incent the development of renewable generation. (See IPA Act, §1-5(4)) However, it can only do so by prioritizing the procurement of contracts that will support such development. Given the current market and financing, those contracts are long-term PPAs. Therefore, the IPA is to evaluate the market and current state of the market in Illinois and make decisions to purchase either RECs or PPAs within the cost constraints of the RERB – not simply the lowest cost product.

Under RESA’s/ICEA’s/ComEd’s/Exelon’s interpretation there would be no need to have a RERB to cap spending because the lowest cost renewable energy product would always be procured. Moreover, under their interpretation only RECs would be purchased because RECs are going to be cheaper than a bundled product of renewable energy plus RECs. Another reason their interpretation is inconsistent with the law is if the lowest cost product – RECs -- is to be purchased then it would be illogical for a “Renewable Energy Resource” to be either a bundled product or a REC.

Finally, their interpretation directly contradicts the purpose of an RPS. The purpose of the renewable procurement is to support development of renewable resources within Illinois up to the limit allowed under the cost-effectiveness test (*i.e.*, RERB). Therefore, the IPA should develop plans that optimize the entirety of the RERB in a way that will incent development. Continuous procurement of 1 yr RECs will not do that. (See WOW Objection at 9-10)

Accordingly, the Commission should affirm the language in the PO, as amended by the replacement language in Wind on the Wires' BOE, or in the alternative, approve Wind on the Wires' proposal of procuring one-year and five year RECs, as reflected in the Replacement Language Exception #1A.

2. Wind on the Wires Proposal Leaves Room for Migration over the Next Five Years

One of the reasons the IPA took exception to the POs conclusion to procure long-term renewable PPAs and mid-term RECs is because the IPA believes there is too much uncertainty in the load projections. The IPA is concerned about the possibility of load migrating to Alternative Retail Electric Suppliers ("ARES") from utilities. The IPA goes on to explain that eligible retail customers who do not migrate will experience an increased rate impact from the renewable products procured and in the event all residential customers migrate to ARES providers the utilities will have to pay for the renewables. (IPA BOE at 16) In addition, the IPA provides a table identifying the migration that has occurred by commercial and industrial customers since 2008. (IPA BOE at 23)

One of the key flaws in the IPAs argument is that there is no evidence in the record indicating that there will be more than 10% migration in the next five years (besides the data of commercial and industrial migration the IPA first introduces in its BOE; which should be disregarded since it wasn't provided during the Comment period is unverified and inapplicable to the likelihood residential customer will migrate). The IPA Plan looks to the Illinois competitive gas market as an indicator of residential customer migration. The IPA Plan notes that 9.3% of Nicor's, The People Gas and Light Company's and North Shore Gas Company's customers left for a competitor since 2002, when retail competition was allowed. (IPA Plan at 16). ComEd and Ameren predict that over the next five years approximately 2% and 10%, respectively, of their customers will migrate to ARES. (IPA Plan Attachment E at 10-12 and Attachment A at 7).

Wind on the Wires looked at the potential migration issue in its Reply and showed that Wind on the Wires' plan was flexible enough to accommodate a larger percentage of migrating customer than what was predicted by Ameren and ComEd over the next five years. Wind on the Wires' analysis was based on ComEd's and Ameren's five year load forecast. If more people migrate than what ComEd and Ameren estimated, the IPA would simply procure fewer one-year RECs over the next five years.

In Wind on the Wires' Reply, we showed that our proposal of short-term and mid-term RECs could accommodate the migration of a little over 5% of ComEd's load in the next five years and just under 14% of Ameren's load in the next 5 years. The table below shows the forecasts supplied by the utilities as the Reference Year Delivered Volume. Also included in the table is the volume of 1 year RECs that would be

procured over the next five years under Wind on the Wires' proposal. The 4th and 7th columns of the table show the number of 1 year RECs being procured in that year. The 2d and 5th columns show one year RECs as a percentage of the utilities forecasted delivered volume. So, for illustrative purposes, in 2015-2016 there is sufficient 1 year RECs to allow for the migration of 5.3%¹ of ComEd's load and 13.9% of Ameren's load.

Planning Year	ComEd			Ameren		
	Reference Year Delivered Volume From Utility Forecasts (MWh) ²	1 YEAR RECs -- Residual Volume in RPS Volume Target -- Adjusted for 5 Yr RECs (MWh) ³	ADDITIONAL SWITCHING: 1 Yr RECS as a % of Reference Year Delivered Volume	Reference Year Delivered Volume (MWh)	1 YEAR RECs - - Residual Volume in RPS Volume Target -- Adjusted for 5 Yr RECs (MWh) ⁴	ADDITIONAL SWITCHING: Residual as % of Reference Year Delivered Volume
2011-2012	35,284,241	1,567,054	4.4%	15,869,084	752,145	4.7%
2012-2013	31,402,974	248,208	0.8%	15,515,203	250,064	1.6%
2013-2014	31,183,782	425,628	1.4%	14,966,120	344,302	2.3%
2014-2015	31,435,435	725,040	2.3%	14,849,085	466,442	3.1%
2015-2016	31,537,286	1,014,505	3.2%	14,493,895	562,427	3.9%
2016-2017	31,647,351	2,021,078	6.4%	14,042,845	918,031	6.5%

Wind on the Wires notes that the percentages approximately double in 2016-2017 when the five year REC contracts end; thus, providing room to accommodate another 3% of residential customer migration. Wind on the Wires' proposal provides flexibility for the

¹ The 5.3% is the sum of 2% estimated by ComEd and the 3.2% of 1 year RECs.

² The Reference Year Delivered Volume starts with the numbers provided by the IPA in the Procurement Plan and subsequent year volumes were calculated using the growth rates derived from the Supply Forecasts that Ameren and ComEd provided the IPA.

³ *Infra*, REVISED Table D: Impact of Procuring the Proposed 5 Yr RECs on ComEd's RPS Target Volumes.

⁴ Wind on the Wire's Objection, Table C: Impact of Procuring the Proposed 5 Yr RECs on Ameren's RPS Target Volumes

IPA to accommodate nearly 200% as much switching predicted by ComEd and nearly 40% more switching than what Ameren predicts will occur in the next 5 years. Thus, the Commission should conclude that there is little likelihood that switching will adversely impact the procurement of five-year RECs.

Accordingly, the Commission should affirm the language in the PO, as amended by the replacement language in Wind on the Wires' BOE or in the alternative approve Wind on the Wires' proposal of procuring one-year and five year RECs, as reflected in the Replacement Language Exception #1A.

3. The Commission is Correct to Acknowledge the Unorthodoxy of the Procurement Execution Phase of the Long-Term Renewable RFPs approved in Docket 09-0373

In its exceptions, the IPA asserts that the Commission should not criticize the 2010 procurement process, but instead rely upon the procurement monitor to assess the performance of the Procurement Administrator. (IPA BOE at 27-29) The PO is correct to acknowledge the delay and rancorous process that occurred in the Procurement Execution phase of the long-term renewable RFPs approved in Docket 09-0373. A discussion of the delays, tightly-scripted workshops, the short notices for workshops and failure to share details on its decision making criteria is part of Iberdrola's objections and supplemental comments and are relevant to its recommendations that workshops be held in an open and transparent fashion and to hold workshops in 2011 to define long term renewable contracts. They should be noted in the PO.

Moreover, the PO is correct in directing the IPA to adhere to the process laid out in the Procurement Plan; administering the procurement of renewables in March and April as described in the Procurement Plan approved by the Commission. The practical impact of delay in the 2010 long-term renewables procurement resulted in parties using it as an argument that long-term PPAs shouldn't occur in 2011. The lack of data was not a result of wind developers actions, so we shouldn't be punished for that. Moreover, developers rely on the public schedule described in the Procurement Plan and have the expectation the plan will be followed unless changes are approved by the ICC.

Developer's income streams revolve around RFPs and publically provided information. Last year's Procurement Plan laid out a schedule that had all procurements occurring in March and April but instead it is occurring in December. The Procurement Plan is public notice of intended action and is approved by the Commission. At a minimum, when there are deviations from the Procurement Plan those deviations should be approved by the Commission and some form of notice of the change provided to the public. For example, in the instance of the 6-7 month delay of the 2010 renewables procurement, the Commission would review the reason for the delay and either the IPA or the Commission would issue a public notice approving a changed procurement schedule. Such a notice would be provided to bidders and parties to the case as part of the public notice process.

Accordingly, the Commission should affirm the language in the PO, as amended by the replacement language in Wind on the Wires' BOE.

4. Workshops to Define Guidelines for Long-Term Renewable PPAs Should be Approved

A few parties took exception to the PO's conclusion that workshops be held in 2011 to define principles or guidelines for long-term renewable contracts. The IPA objects to such a proposal for three reasons: [a] the timeline suggested by Iberdrola cannot be met since a procurement administrator cannot be hired by February 1, 2011; [b] the Commission shouldn't usurp the authority of the procurement experts; and [c] the IPA has no way of paying for the workshops. (IPA BOE @ 29-32) RESA also objects to this finding and asserts that workshops are not needed if long term contracts are not approved in this docket. (RESA BOE @ 11)

A workshop that establishes guidelines for the development of long-term renewable contracts provides stability for renewable development. The procurement of renewables tends to be the most highly debated issue in annual energy procurement hearings. Long-term contracts are needed for development, therefore, holding these workshops would be consistent with the legislative declarations and findings of the IPA Act that the purpose of the RPS is to support development of renewable generation. As such, there is real benefit in having guidelines defined for future procurements.

RESA's objection misses the point of the workshops. The workshops aren't needed just for the 2011 procurement, they are needed to establish guidelines, similar to an administrative rule but not binding, which the procurement administrator can call upon and refer to in developing a long term PPA in any year -- 2011, 2012, 2015 or whenever.

Of the points raised by the IPA, we note that the Procurement Plan estimates about eight weeks between issuing and RFQ and selecting the procurement

administrator. (IPA Plan at 12) Wind on the Wires has no objection to pushing back the hiring date to something around mid-March, which would allow eight weeks from the beginning of the year to hire an administrator. We'd be open to an even later date if the IPA were to coordinate with renewable stakeholders in establishing a timeline for action.

In response to the IPAs argument that it has no way of recovering costs for the workshops, we note that Iberdrola suggested that renewable developers pay for the costs. Wind on the Wires does not object to that concept, however, we did identify some limited exceptions in our *Response to Iberdrola Renewables' Supplemental Comments*.

Accordingly, the Commission should affirm the language in the PO, as amended by the replacement language in Wind on the Wires' BOE.

5. Wind on the Wires' proposal for 5 yr RECs has addressed all of the issues raised by Staff

The ICC points out that there are key components of Iberdrola's position that have not been addressed by the PO, such as (a) how the statutory spending cap is to be allocated among each of the five different types of renewable contracts in Iberdrola's proposal; (b) how the statutory spending cap is to be allocated among all future contracts that would be needed to fulfill the IPA Acts growing renewable resource requirements; and (c) how to handle potential future reductions in the statutory spending cap. Silence by the PO presumably means the IPA would answer these questions in the implementation phase. (Staff BOE @ 8)

While Wind on the Wires defers to Iberdrola to answer Staff's concerns about its proposal, we we point out that Wind on the Wires' proposal for one-year and five-year

RECs has addressed all of the issues raised by Staff that are relevant⁵ and should be adopted.

Accordingly, the Commission should affirm the language in the PO, as amended by the replacement language in Wind on the Wires' BOE or in the alternative approve Wind on the Wires' proposal of procuring one-year and five year RECs, as reflected in the Replacement Language Exception #1A.

6. Wind on the Wires Presented Sufficient Evidence to Support its Renewable Procurement Proposal

ComEd takes exception to the POs approval of Iberdrola's proposal of short-term and mid-term RECs and long term contracts because none of the parties presented any "data or other detailed analyses in support of their positions, as required by the PUA in order for their recommendation to be adopted." (ComEd BOE at 7) Therefore, ComEd states that only 1 year RECs should be approved.

Wind on the Wires did present sufficient evidence to support its proposal. Section 10-15 of the Illinois Administrative Procedure Act provides that "[u]nless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence." 5 ILCS 100/10-15. The Commission has observed that the Administrative Procedure Act standard appears to be "the appropriate standard in all contested cases[.]" Order at 4, Illinois Commerce Commission on its Own Motion:

⁵ Future reductions in the spending cap manifests itself in a different fashion of 5 yr RECs then it does for 20 yr contracts. For five year RECs it is a migration issue, and Wind on the Wires has addressed that issue in its Reply and herein, *supra*.

Amendment of 83 Ill. Admin. Code Part 200, ICC Docket No. 92-0024 (April 29, 1992)⁶.

Consequently, the standard of proof in this case is the preponderance of the evidence standard. It appears, therefore, that Wind on the Wires and ComEd have a different understanding of the preponderance of the evidence standard the Commission is to use in evaluating the information presented it. We leave it to the Commission to determine whether Wind on the Wires has met its burden.

Accordingly, the Commission should affirm the language in the PO, as amended by the replacement language in Wind on the Wires' BOE or in the alternative approve Wind on the Wires' proposal of procuring one-year and five year RECs, as reflected in the Replacement Language Exception #1A.

7. Actual Renewable Energy

ESA asserts that the PO's approval of Iberdrola's position is based on the creation of a para-statutory term of "actual renewable energy." (RESA BOE at 6-7) Wind on the Wires understood the word 'actual' to be a modifier of "renewable energy" and used for emphasis. Wind on the Wires did not read the "actual renewable energy" to be, nor the PO intend to create, a new term. While Wind on the Wires wouldn't object to the continued use of "actual" in the Order, an edit can easily be made that keeps the intent of the Order intact.

See attached Replacement Language for Exception #1B.

⁶ It is worthy of note that the Chicago Bar Association, which rarely participates in Commission proceedings, filed comments in Docket No. 92-0024 supporting the preponderance standard. Order at 1-2.

8. ICEA's Exceptions are Misguiding

ICEA raises a number of exceptions with the PO:

- a. The Alternative Compliance Payment set forth in Section 1-56 is distinct from and completely independent of the annual procurement process for utilities and should not be relied upon in determining whether long term contracts should be used in utility renewable procurements (ICEA BOE at 6);
- b. ICEA asserts that the PO failed to determine whether the proposal is cost-effective (ICEA BOE at 6-7);
- c. ICEA asserts that if a long term PPA is approved the premiums implicit in such a product will also be included in the ARES funded Alternative Compliance Payments and potentially increase the prices for all Illinois customers (ICEA BOE at 8);
- d. ICEA asserts that it is puzzled why the PO decided to procure long-term contracts for the utilities and ignores using the ARES Alternative Compliance Payments to procure long-term renewables (ICEA BOE at 9);
- e. ICEA also suggests that if the premium under any long-term contract is not projected to be equal to or less than the procurement of one year RECs, then the proposed procurement is in violation of the IPA Act (ICEA BOE at 9);
- f. ICEA asserts that the benchmark and caps do not protect Illinois consumers from paying premium prices and will not assure consumers they are paying the lowest cost over time. (ICEA BOE at 11).

ICEA argues that the PO should not have relied upon Section 1-56 of the IPA Act because that provision is distinct and completely separate from the utility procurement.

(ICEA BOE at 6) However, ICEA's BOE does acknowledge a connection on pages 8 and 9 of its exceptions. Section 1-56 establishes the Renewable Energy Resources Fund which is funded by Alternative Compliance Payments ("ACPs") from ARES. The ACP rate charged to ARES is based on the rates the utilities paid for their renewable resources. To prevent utilities from benefitting from long-term renewable contracts and the long-term rate benefits it provides in the latter-half of its life, Section 1-56(d) states that "the price paid to procure renewable energy credits using monies from the Illinois Power Agency Renewable Energy Resources Fund shall not exceed the winning bid prices paid for like resources procured for electric utilities required to comply with Section 1-75 of this Act." For example, if the ACP is used to purchase 20 year PPAs for ARES, the IPA cannot procure that product at a price that exceeds the price paid by the utilities for 20 year PPAs. And again, if the ACP is used to purchase one or five year RECs, the RECs purchased for ARES cannot exceed the prices the utilities paid for like resources. This results in renewable energy procurements not giving a competitive advantage to utilities over ARES and vice-versa; therefore, ARES are not competitively harmed by the utility procurement. Moreover, since the Section 1-56(d) states long-term contracts are to be procured "whenever possible" and also states that the money used from the fund to procure RECs shall not exceed the winning bid prices *for like resources* procured for utilities, there must have been the expectation or intent that long-term contracts were going to be procured for utilities.

ICEA raises the concern as to whether Iberdrola's procurement is cost effective. (ICEA BOE at 6-7) Section 1-75(c)(1) defines 'cost-effective' as "the costs of procuring renewable energy resources do not cause the limit stated in paragraph (2) of this

subsection (c) to be exceeded and do not exceed the benchmarks based on market prices for renewable energy resources in the region . . .” The cost-effectiveness test is administered at the time of procurement and not within the procurement hearing. This is evident from the fact that the benchmark used in the cost-effectiveness test is held confidential.

ICEA argues that a long-term PPA will increase the ARES ACP costs and thereby increase the costs for its customers. (ICEA BOE at 8) First, there is no data to support this allegation in ICEAs BOE or in the record. Second, this argument is more of a challenge of the legitimacy of the statute than the product to be procured. The General Assembly has already approved an increase in rates for procuring renewable resources up to the limits of the cost-effectiveness test in 1-75(c)(2). Moreover, the statutory scheme will not competitively harm ARES because the prices paid for ARES renewable resources procured by the IPA will not exceed the prices paid by utilities for like resources, as discussed above. (See *a/so* IPA Act §1-56(d))

ICEA asserts that it is puzzled why the PO is ignoring the use of the ACP collections for long-term procurement. (ICEA BOE at 9) No party had recommended this position, so there is no basis upon which the PO would have considered it prior to ICEA raising the issue. It also seems unlikely that ICEA is asking for the Order to make a finding that that the IPA procure long-term contracts for ARES since this is a utility procurement. Nonetheless, the fact that the IPA can procure renewable energy

resources for ARES through long-term PPAs seems irrelevant to the utilities procurement.⁷

ICEA also suggests that if the premium under any long-term contract is not projected to be equal to or less than the procurement of one-year RECs, then the proposed procurement is in violation of the IPA Act. (ICEA BOE at 9) Wind on the Wires strenuously objects to this interpretation of Section 1-56. Section 1-56(d) states that the price comparison is of “like resources” *not* a 20 year PPA to a one-year REC. They are completely different products and the factors affecting the price of each product are different.

Accordingly, the Commission should affirm the language in the PO, as amended by the replacement language in Wind on the Wires’ BOE or in the alternative approve Wind on the Wires’ proposal of procuring one-year and five year RECs as reflected in the Replacement Language Exception #1A.

9. The Role of RECs in Supporting the Growth of Renewable Resources

ComEd and RESA take exception to the PO’s approval of Iberdrola’s proposal of short-term and mid-term RECs and long term contracts because the PO incorrectly concludes that only physical energy can be procured. ComEd asserts that the PO’s conclusion was erroneous because it

appears to be driven by the belief that RECs are not directly related to the production of electricity by a renewable energy resource. This is clearly not the case.

⁷ We do not disagree with ICEA that long-term contracts should also be used for ARES procurements intended to meet the renewable portfolio standard. The same reasons we provided, herein, for the procurement of renewable energy through long-term contracts for utilities also applies to ARES.

A REC is created only in conjunction with the physical generation of electricity supply. . . . And as sections 1-20 and 1-75 of the IPA Act provide, electricity is generated in the production of every REC. (ComEd BOE at 3)

RESA expresses a similar objection, stating that “the IPA’s Procurement Plan meets the requirement that it ‘include electricity generated from renewable resources . . .’ if the Plan includes RECs because RECs represent electricity generated from renewable resources.” (RESA BOE at 5)

Electricity is not produced as a result of a REC, nor does a REC represent electricity generated from a renewable resource. As defined in Section 1-10 of the IPA Act, a REC is “a tradable credit that represents the environmental attributes of a certain amount of energy produced from a renewable energy resource.” This is a key aspect to understand, because it relates to the purpose of a renewable portfolio standard. Energy procurements to meet the renewable portfolio standard uses the cost-effectiveness test to ensure a reasonable price is obtained. The lowest total cost over time also ensures a reasonable price but the two cannot be applied at the same time. The more specific standard supplants the more general, therefore the cost-effective standard is used in place of the lowest total cost over time for procurements of renewable to meet the renewable portfolio standard. How this is implemented is crucial to a larger issue of jobs, tax base and economic growth in Illinois. If “support”, as that term is used in Section 1-5(4) of the IPA Act, of renewable resources was intended by the Illinois General Assembly to mean -- spend the least amount of money on renewable energy or RECs -- then there is no purpose to having an RPS. As Exelon Generation has pointed out, windfarms have developed without the RPS. (Exelon BOE at 10) The reason to have an RPS is to bring economic development to Illinois by attracting or supporting the

development of renewable generation. And I'll waste ink on the obvious state of affairs – Illinois has a jobless rate of 9.8%⁸ and more industry in Illinois that brings construction and full-time jobs as well as increased economic spending is a benefit for the State of Illinois. A publically available report⁹ from the Center for Renewable Energy, at Illinois State University, estimates that approximately 1,850 MW of wind generation capacity in Illinois will generate approximately \$3.2 billion of economic stimulus over 25 years, and approximately 10,000 construction jobs and 500 full time jobs.

The reason a REC can be procured instead of renewable energy is not only because it represents the environmental attributes of renewable energy that has been produced but because it is a way of “support[ing] the growth of . . . renewable resources.” (IPA Act, §1-5(4)). The IPA can support growth by either procuring bundled energy and RECs or RECs only, but do so through a portfolio of products that support development of renewable generation. Since the procurement is supposed to support the growth of renewable generation the IPA should prioritize those renewable products that will result in the construction of renewable generation. In making that determination, a bundled product is more beneficial for building new wind generation than RECs, whereas mid-term and short-term RECs almost exclusively benefit existing facilities. Therefore, the priority should be to purchase long-term PPAs, and RECs should only be used to balance the RPS requirement in a way that allows the annual procurement to stay under the cost-effectiveness test (*i.e.*, RERB). RECs can also be used as a hedge against market specific factors – such as migration. To view the

⁸ See Illinois Department of Employment Security, News Release -- November 18, 2010 (<http://www.ides.state.il.us/economy/cps.pdf>)

⁹ *Economic Impact: Wind Energy Development in Illinois*, (June 2010) (<http://renewableenergy.illinoisstate.edu/wind/publications/2010%20FINAL%20NEW%20Economic%20Impact%20Report.pdf.pdf>)

procurement of a REC as equal to the procurement of renewable energy is to ignore the decision of the General Assembly to establish an RPS so as to support the growth of renewable energy within the rate impact limits of the cost-effectiveness test.

Accordingly, the Commission should affirm the language in the PO, as amended by the replacement language in Wind on the Wires' BOE.

Exception #2

VII. Disputed Issues and Commission Conclusions

E. Short-Term Collateral Requirements

1. Staff's Replacement Language

In its exceptions, Staff recommends that the Commission take no action regarding renewable energy resources that are not acquired due to default, but to have the IPA develop a more robust proposal for handling supplier defaults in next year's procurement. (Staff BOE at 18) The focus of parties' comments on this topic seems to have shifted from a discussion of one-year RECs to general supplier default that could be applied to products other than one-year RECs. Whether the intent of parties commenting on this issue was to expand the discussion or not is a bit unclear to Wind on the Wires, so we point out that ComEd's original objection was focused on one-year RECs and recommend the conclusion be limited to one-year RECs.

In addition, Wind on the Wires supports the replacement language Staff provided in its BOE for Section VII(E).

2. The Purpose of the RPS Provision Necessitates the Procurement of Replacement RECs

In its exceptions, ComEd challenges the POs finding that RECs must be replaced. ComEd asserts that since there is no true-up requirement and there is no penalty provision that the renewable portfolio standard is a contractual requirement. (ComEd BOE at 12) ComEd also interprets the lack of an express statement in the renewable portfolio standard that the RECs be replaced to mean there is no requirement to replace the REC. (Id. at 13)

The RPS is not simply a contractual construct but is a statutory requirement implemented through contract and therefore subject to typical contracting issues. The lack of an express statement to purchase replacement RECs or the lack of a penalty provision does not mean there isn't a requirement on the utility. ComEd has flipped the laws of statutory construction on its head in this instance. The requirement arises from the statute and the use of the word "shall" in Section 1-75(c) of the IPA Act. The only reason the requirement would become optional, given the use of 'shall', is if the statute expressly stated that the utility doesn't need to buy replacement RECs. As noted, the statute is silent on replacement RECs so the Commission has the opportunity to interpret the intent of the statute. ComEd's interpretation is contrary to the intent of the statute, which is to actually procure renewable energy resources not attempt to procure them.

While Wind on the Wires, disagrees with the underlying principles ComEd is espousing as well as its understanding that replacement RECs do not need to be procured, Wind on the Wires acknowledges the impact of contracting issues. Accordingly, Wind on the Wires sees merit in Staff's argument that at some point the

cost of the procurement event outweighs the value of the procurement. Perhaps the conditions surrounding such an event could be addressed in next year's procurement hearing or even put into a rule so parties are aware of certain standard procedures the IPA may put in place for procurements.

CONCLUSION

WHEREFORE, Wind on the Wires recommends that the Commission adopt the recommendations contained herein.

Respectfully submitted,

_____/s_____
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DATED: December 1, 2010

Proposed Replacement Language

Exception #1A	i
Exception #1B	vii

* * *

EXCEPTION #1A

If the Commission were to accept Wind on the Wires position, the Commission should incorporate the replacement language Wind on the Wires recommended for Exceptions #1 and #2 of its BOE with the limited changes included herein:

Proposed Order page 77:

15. Commission Conclusion

The Commission appreciates Iberdrola's efforts to resolve through compromise perhaps the most contentious issue in this proceeding. As is obvious from the responses to Iberdrola's offer, however, no consensus exists. The Commission therefore understands Iberdrola's position to be that which it previously advocated.

To resolve this issue, the Commission will start with a review of the relevant portions of the IPA Act and PUA. Without discussing in detail, it is clear that the legislative declarations and findings in Section 1-5 of the IPA Act support the development and procurement of renewable energy resources. Section 1-10 of the IPA Act defines various terms used therein. Section 1-10 defines "renewable energy resources" as:

"Renewable energy resources" includes energy and its associated renewable energy credit or renewable energy credits from wind, solar thermal energy, photovoltaic cells and panels, biodiesel, crops and untreated and unadulterated organic waste biomass, tree waste, hydropower that does not involve new construction or significant expansion of hydropower dams, and other alternative sources of environmentally preferable energy. For purposes of this Act, landfill gas produced in the State is considered a renewable energy resource. "Renewable energy resources" does not include the incineration or burning of tires, garbage, general household, institutional, and commercial

waste, industrial lunchroom or office waste, landscape waste other than tree waste, railroad crossties, utility poles, or construction or demolition debris, other than untreated and unadulterated waste wood.

Section 1-10 defines RECs as:

"Renewable energy credit" means a tradable credit that represents the environmental attributes of a certain amount of energy produced from a renewable energy resource.

Section 1-20 of the IPA Act sets forth the general powers of the IPA. Subsection (a)(1) provides:

- (a) The Agency is authorized to do each of the following:
 - (1) Develop electricity procurement plans to ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability, for electric utilities that on December 31, 2005 provided electric service to at least 100,000 customers in Illinois. The procurement plans shall be updated on an annual basis and shall include electricity generated from renewable resources sufficient to achieve the standards specified in this Act.

Section 1-56 of the IPA Act establishes the Illinois Power Agency Renewable Energy Resources Fund, known throughout this Order as the RERB. Subsection (c) provides:

- (c) The Agency shall procure renewable energy resources at least once each year in conjunction with a procurement event for electric utilities required to comply with Section 1-75 of the Act and shall, whenever possible, enter into long-term contracts.

Section 1-75 of the IPA Act sets forth the IPA's obligations pertaining to planning and procurement. Subsection (c)(1) establishes the RPS, under which cost-effective renewable energy resources are to be procured in specified percentages. The first part of subsection (c)(1) states:

- (c) Renewable portfolio standard.
 - (1) The procurement plans shall include cost-effective renewable energy resources. A minimum percentage of each utility's total supply to serve the load of eligible retail customers, as defined in Section 16-111.5(a) of the Public Utilities Act, procured for each of the following years shall be

generated from cost-effective renewable energy resources: .

. . .

Section 16-111.5 of the PUA contains provisions relating to procurement. Subsection (d)(4) of Section 16-111.5 provides:

- (4) The Commission shall approve the procurement plan, including expressly the forecast used in the procurement plan, if the Commission determines that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.

While discussing what type of renewable energy resources should be included in the Plan, the parties expressed a variety of views on what obligations the IPA and Commission are under. Some argued that there is no requirement that any particular type of renewable resource be procured. Others emphasized that whichever type of renewable resource is procured, it must be the lowest cost option. The Commission has considered the arguments and reviewed the relevant statutory provisions. When a statute is clear on its face, the Commission must abide by it. The last sentence of Section 1-20(a)(1) of the IPA Act states, "The procurement plans shall be updated on an annual basis and *shall include electricity generated from renewable resources* sufficient to achieve the standards specified in this Act." (emphasis added) "Electricity" is not separately defined in the IPA Act and is clearly not within the definition of a REC. The Commission therefore understands the term to have its common meaning. Accordingly, the Commission interprets Section 1-20 of the IPA Act as requiring the procurement of actual renewable energy, not just RECs.

Section 1-75(c) of the IPA Act corroborates this interpretation of Section 1-20. Subsection (c)(1) of Section 1-75 provides: "A minimum percentage of each utility's total *supply* . . . procured for each of the following years *shall be generated* from cost-effective renewable energy resources" (emphasis added) RECs do not directly provide supply to serve a load, nor do RECs directly generate supply. The Commission understands this statutory provision to mean that a portion of a utility's supply shall consist of actual renewable energy, rather than just RECs, in the context of satisfying the RPS. Moreover, the Commission observes that under Section 1-56 of the IPA Act, when procuring renewable energy resources, the IPA shall enter into long-term contracts whenever possible.

~~The Commission therefore appears bound to require that the Plan provide for the procurement of renewable energy and not simply RECs. The rRenewable energy should also be acquired through long-term contracts when possible, to support development of renewable resources as declared by the General Assembly in Section 1-5(4) of the IPA Act in compliance with Section 1-56 of the~~

~~IPA Act.~~ The Commission recognizes that not all of the Plans in the past three years have called for the procurement of renewable energy. AIC and ComEd drafted the first Plans prior to the organization of the IPA as required by Section 16-111.5(j) of the PUA. Those Plans were the subject of Docket No. 07-0527 (AIC) and Docket Nos. 07-0528/07-0531 (Cons.) (ComEd). None of the parties in those cases appear to have referenced Section 1-20 of the IPA Act, but with only approximately seven weeks to process the cases under the recently enacted IPA Act, the omission is understandable. The IPA crafted the next Plan for the utilities, which was the subject of Docket No. 08-0519. The Plan under that docket represented the IPA's first attempt to implement the new law. The Commission Order in Docket No. 08-0519 encouraged the parties and the IPA to pursue the possibility of acquiring multi-year or long-term renewable resources. The most recent Plan, approved in Docket No. 09-0373, clearly includes the procurement of long-term renewable energy via 20-year contracts. But for reasons not entirely clear, the bidding for the long-term renewable energy is not scheduled to occur until December, 2010.

Some parties have argued that because the long-term renewable energy procurement under the prior Plan has not been completed yet, the Commission should not require the pending Plan to include a similar requirement. They suggest that information and experience obtained from the procurement of long-term renewable energy under the prior Plan will facilitate any future efforts to do so again. While it may be easier or more convenient to do so, the Commission is not at liberty to ignore the requirements of the IPA Act. Because they are inconsistent with the law, the recommendations that the pending Plan defer the inclusion of renewable energy are therefore rejected. In addition, the Commission notes that the record sheds no light on exactly why the IPA waited for eight months to pass before beginning the process for procuring long-term renewables contracts. This delay is puzzling and unfortunate since it places the Commission in an undesirable position.

Having determined that the Plan must include renewable energy to support growth of renewables more than just RECs, the Commission must identify what renewable energy resources the Plan should include. ~~The record reflects few proposals beyond one-year RECs.~~ WOW proposes that the IPA procure a mix of one- and five-year RECs, and does so in a way that allows for more migration of customers than estimated by ComEd and Ameren~~which fails to satisfy the requirement to include renewable energy.~~ Duke urges the Commission to require the procurement of long-term renewable energy. Specifically, Duke recommends that the AIC portfolio include 600,000 MWh/year from renewable energy providers, starting in 2012. For ComEd, Duke recommends that the portfolio include 1,400,000 MWh/year. Iberdrola believes that an appropriate renewable energy procurement for the 2011 Plan should include three components: (1) 20% one-year REC contracts; (2) 30% three- to five-year REC contracts divided into 10% tranches for three, four, and five years, respectively; and (3) a 20-year contract for renewable energy resources

commencing in 2012 representing the remaining 50%. Iberdrola's proposal is ~~the better well~~ defined but appears to result in the utilities procuring approximately 135% to 140% of the 2012 renewable portfolio standards' requirement. While the renewable portfolio standards' requirements in Section 1-75(c) are 'minimums', at this time we are uncomfortable procuring 35% to 40% more than the floor of those that satisfy the requirement for procuring renewable energy. While Duke identifies specific volumes of energy in its proposal, the Commission is reluctant to adopt it since it is not clear how those volumes will fit into the RPS and overall load forecast. ~~In the absence of any other viable alternative, the Commission adopts Iberdrola's proposal. Thus, of the proposal's submitted, WOWs proposal is the one most likely to support growth of renewable generation and procure sufficient renewable resources within the cost-effectiveness test of the RERB.~~

Critics of Iberdrola's proposal argue that it is not the lowest cost option and therefore conflicts with the requirements of the IPA Act and PUA. Such critics, however, fail to recognize the underlying requirement for renewable energy in the Plan as well as the other competing interests identified in the IPA Act and PUA: adequacy, reliability, affordability, efficiency, sustainability, as well as low cost. In addition, in balancing the cost factor, the statutes provide that it must be "the lowest total cost *over time*." (emphasis added) (See Section 1-20(a)(1) of the IPA Act and Section 16-111.5(d)(4) of the PUA) The Plan, if drafted in adherence to the law, will reflect the balancing of the competing interests identified in the statutes. While cost is certainly a significant factor, it is not the overriding factor. So long as in meeting the RPS for the applicable years, the IPA attempts to procure renewable electricity and renewable energy resources consistent with the Plan via a competitive bidding process and does not exceed the applicable price caps, the law is satisfied. The fact that short-term RECs alone may be the least expensive option at the time does not mean that the IPA and the Commission should disregard all other requirements and goals of the IPA Act.

Such goals include diversity of supply, economic development (particularly within Illinois), and the promotion of renewable energy. Diversity of supply will serve as a hedge against price volatility. Economic development occurs when generation sources are built and energy costs are low. In addition, as a general matter, in selecting the types of products to procure for the RPS, the IPA should develop a portfolio of renewable products that ensures long-term growth of renewable energy resources to ensure success of the RPS through its end date of 2025. Setting aside for the moment the requirement to procure actual renewable energy, the long-term growth of renewable energy resources in Illinois appears uncertain if cost is the sole focus and only one-year RECs are procured. Procuring renewables through longer term contracts will foster the growth of renewable energy under Illinois law. Greater competition among all sources of power will drive down the price and encourage ample supply at the lowest cost. Procuring renewable energy in this way can provide long-term price stability.

Having determined that long-term contracts for renewable energy are needed to foster the growth of renewable generations~~should be included in this Plan~~, the Commission is also faced with the concerns over the long-term contract development process. Even if only half of the suppliers' allegations are true, the Commission would still find the situation troubling. As noted above, the Commission is perplexed as to why the IPA waited until August of 2010 to begin the contract development process for the long-term renewables contracts. The delay and subsequent expedited schedule, followed by a repeat of efforts in the midst of this proceeding, benefits no one and stymies the ability of the parties to accomplish the goal. To improve the odds of avoiding such problems when implementing the Plan approved in this docket, the IPA should begin the contract development process no later than February 1, 2011 and generally follow the timeframe set forth in the attachment to Iberdrola's objections to the Plan. While mindful that the contract development process is subject to Commission oversight per Section 16-111.5(e)(2), given the mixed results under Appendix K, the Commission will not interject itself into the long-term renewables contract development process as it did with Appendix K. But the Commission does expect the IPA and Procurement Administrator(s) to institute the maximum degree of transparency in the contract development process. The Commission is unaware of any reason for the process that does not involve benchmarking or bid comparison to be conducted *in camera* or developed by select participants while excluding other interested parties. To the extent a participant's comments or other information is commercially sensitive, the participant could so indicate and such information could be redacted to exclude what is commercially sensitive and any other information could be open to public review. Participants could also enter into confidentiality agreements, which is a standard practice before the Commission. Above all, the Commission expects the participants in the contract development process to act in good faith. The Commission also notes that Appendix K should not be considered the starting point for long-term renewables contract development for such contracts under this Plan. This is not to say, however, that there can be no similarities between contracts under Appendix K and those implementing this Plan. The Commission simply does not want the contract development workshops to be constrained by competing interpretations of Appendix K, which appears to have occurred during the implementation of the prior Plan.

To the extent that Iberdrola and/or other suppliers of renewable energy resources remain concerned about the contract development process, they may want to consider taking steps to have the PUA modified. Section 16-111.5(e)(2) addresses situations in which the Procurement Administrator can not reach agreement with an electric utility as to the contract terms and conditions. In such instances, subsection (e)(2) provides that the Procurement Administrator must notify the Commission of any dispute and the Commission shall resolve the dispute. No similar provision exists for suppliers aggrieved by the process. Nothing restricts suppliers from seeking similar opportunities for review under the PUA.

With regard to photovoltaics, determining how to address the related issues should occur sooner rather than later given the concerns surrounding the late development of long-term renewables contracts under Docket No. 09-0373. Whether such issues should be addressed in the workshops described in the preceding paragraph, however, is not clear. If a consensus exists among the workshop participants to take up photovoltaic issues, perhaps it would be appropriate to do so. But it appears to the Commission that the participants may be better off focusing on implementation of the Plan approved in this proceeding and discussing photovoltaics in separate workshops.

EXCEPTION #1B

Proposed Order, page 78:

While discussing what type of renewable energy resources should be included in the Plan, the parties expressed a variety of views on what obligations the IPA and Commission are under. Some argued that there is no requirement that any particular type of renewable resource be procured. Others emphasized that whichever type of renewable resource is procured, it must be the lowest cost option. The Commission has considered the arguments and reviewed the relevant statutory provisions. When a statute is clear on its face, the Commission must abide by it. The last sentence of Section 1-20(a)(1) of the IPA Act states, "The procurement plans shall be updated on an annual basis and *shall include electricity generated from renewable resources* sufficient to achieve the standards specified in this Act." (emphasis added) "Electricity" is not separately defined in the IPA Act and is clearly not within the definition of a REC. The Commission therefore understands the term to have its common meaning. Accordingly, the Commission interprets Section 1-20 of the IPA Act as requiring the procurement of **actual** renewable energy, not just RECs.

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* * *

Proposed Order, page 80:

Such goals include diversity of supply, economic development (particularly within Illinois), and the promotion of renewable energy. Diversity of supply will serve as a hedge against price volatility. Economic development occurs when generation sources are built and energy costs are low. In addition, as a general matter, in selecting the types of products to procure for the RPS, the IPA should develop a portfolio of renewable products that ensures long-term growth of renewable energy resources to ensure success of the RPS through its end date of 2025. Setting aside for the moment the requirement to procure **actual** renewable energy, the long-term growth of renewable energy resources in Illinois appears uncertain if cost is the sole focus and only one-year RECs are procured. Procuring renewables through longer term contracts will foster the growth of renewable energy under Illinois law. Greater competition among all sources of power will drive down the price and encourage ample supply at the lowest cost. Procuring renewable energy in this way can provide long-term price stability.