

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

The Illinois Power Agency)	
)	
Petition for Approval of the)	Docket No. 13-0546
2014 IPA Procurement Plan pursuant to)	
Section 16-11.5(d)(4) of the)	
Public Utilities Act.)	

BRIEF ON EXCEPTIONS OF THE RENEWABLES SUPPLIERS
TO THE ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER

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Attachment 1: Proposed revised text for §II.D.7 of the ALJPO

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Pursuant to 83 Ill. Admin. Code §200.830, the Renewables Suppliers¹ submit this Brief on Exceptions (“BOE”) to the Administrative Law Judge’s Proposed Order (“ALJPO”), and take exception to two “Commission’s Conclusions” sections of the ALJPO:

- Section II.D.7 on “Renewable Resources” (ALJPO at 174-176), in particular the ALJPO’s rejection of the Renewables Suppliers’ position that only the renewable energy credit (“REC”) portion of the LTPPAs should be curtailed in order to prevent the renewable portfolio standard (“RPS”) rate impact caps of §1-75(c)(2) of the Illinois Power Agency (“IPA”) Act (20 ILCS 3855/1-75(c)(2)) from being exceeded, and that the utilities should continue to settle the energy portion of the LTPPAs associated with the curtailed RECs; and the rejection of the Renewables Suppliers’ alternative proposal for setting the price at which curtailed RECs are purchased.
- Section II.E.7 on “Load Forecasts” (ALJPO at 192-194), in particular the ALJPO’s rejection of the Renewables Suppliers’ proposals (i) for adjusting the utilities’ “base” load forecasts to better account for the risk of re-migration of customer load from ARES to the utilities; and (ii) that the utilities’ Spring 2014 load forecast updates should be filed with the Commission, a brief period should be allowed for interested parties to file comments on the load forecasts, and the Spring 2014 load forecasts should then be adopted, adopted with adjustments, or rejected by a Commission order.

Section I below states the Renewables Suppliers’ exceptions to the ALJPO’s conclusions in §II.D.7, while §II states the Renewables Suppliers’ exceptions to the ALJPO’s conclusions in §II.E.7. Attachment 1 provides specific proposed language changes, in legislative style, to §II.D.7 of the ALJPO, while Attachment 2 provides proposed language changes to §II.E.7.

I. EXCEPTIONS TO §II.D.7 OF THE ALJPO

A. The IPA Plan Should Provide, and the Commission Should Order, that Only the REC Purchase Portion of the LTPPAs Should Be Curtailed

The Renewables Suppliers recommended that the IPA Plan should provide, and the Commission should order, that if the RPS rate caps will be exceeded for either utility for the

¹ The Renewables Suppliers are: **Algonquin Power Co.** and its subsidiary project company GSG 6, LLC; **EDP Renewables North America LLC** and its subsidiary project companies Blackstone Wind Farm, LLC, Meadow Lake Wind Farm, LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm III LLC and Meadow Lake Wind Farm IV LLC; **Invenergy LLC** and its affiliated project companies Grand Ridge Energy IV LLC and Invenergy Illinois Solar I LLC; and **NextEra Energy Resources, LLC** and its subsidiary project company FPL Energy Illinois Wind, LLC. The Renewables Suppliers, through their project companies, have entered into long-term power purchase agreements (“LTPPAs”) with Commonwealth Edison Company (“ComEd”) and/or Ameren Illinois Company (“AIC”) to supply renewable energy resources.

2014-2015 procurement year, only the REC purchase portion of the LTPPAs, and not the energy component, should be curtailed. Correspondingly, the Commission should direct the utilities to settle the energy associated with curtailed RECs by paying the LTPPA suppliers the applicable energy price from the IPA's 2010 forward energy price curve less the day-ahead hourly Locational Marginal Prices ("LMP").² This proposal is based on the specific terms of the LTPPAs, and flows directly from the method the IPA used to evaluate the original bid prices in the LTPPAs in the December 2010 renewable resources procurement event and continues to use to determine if the RPS rate caps will be exceeded in a procurement year.

The ALJPO's reasons for rejecting the Renewables Suppliers' proposal (stated at page 175) have a common underlying, but erroneous, premise: that the proposal would require the Commission to "unilaterally change the terms of the contracts." This is incorrect. The relevant provision of the LTPPA (§D, Payment Obligations, in the "Confirmation" of the LTPPAs), states in pertinent part:

Buyer is allowed to recover all costs and other amounts incurred under this Confirmation and the Master Agreement from its customers pursuant to a pass-through tariff that is authorized by section 16-111.5(1) of the Illinois Public Utilities Act (220 ILCS 5/16-111.5(1)) and approved by the Illinois Commerce Commission. Notwithstanding anything to the contrary in this Confirmation or the Master Agreement, Buyer shall not be liable to Seller for any amounts, including any Early Termination Amounts that might otherwise be due under Section 6(e) of the Master Agreement, that Buyer is not allowed to or cannot recover, for whatever reason, from its customers through those pass-through tariffs.

Unless otherwise required by law, statute or an 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 any 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 recovery; 2) **unless otherwise directed by the Illinois Commerce Commission,** Buyer shall reduce the quantity of Product purchased under all

² The bases for the Renewables Suppliers' proposal, and our responses to the arguments of other parties concerning the implementation of curtailments under the LTPPAs, are fully and accurately summarized in §II.D.1 (pp. 153-165) of the ALJPO.

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; and 3) Buyer will provide notice to Seller each time a change is made to the Annual Contract Quantity under this provision. [Emphasis added.]

Under this contract provision, the utility cannot curtail purchases under the LTPPAs unless authorized to do so by an order of the Commission that specifies the extent to which purchases would cause the cost caps of §1-75(c)(2) to be exceeded. Under this provision, any reduction in purchases must be established by a Commission order. While the “default” implementation of a reduction in purchases is a reduction in the quantity of “Product” (defined elsewhere in the LTPPAs as RECs plus the associated energy) to be purchased by the utility, the contract expressly provides that a different implementation of the curtailment can be “otherwise directed by the Illinois Commerce Commission.” Thus, contrary to the ALJPO’s reasoning, the express terms of the LTPPA rely on an order of the Commission to determine whether and to what extent the utility may reduce purchases under the LTPPA to prevent the cost caps from being exceeded (*i.e.* to direct a curtailment), and rely on the Commission order to determine the manner in which the curtailment shall be implemented.

As noted above, the Renewables Suppliers’ proposal flows directly from the method the IPA used to evaluate the original bid prices in the LTPPAs in the December 2010 renewable resources procurement event, and continues to use to determine if the RPS rate caps will be exceeded in a procurement year. Specifically, in evaluating the bids in the December 2010 procurement event, the IPA Procurement Administrator developed and used a confidential forward energy price curve containing a projected energy price for each year to be covered by the LTPPAs. The IPA (and the Commission) used the 2010 forward energy price curve to calculate an imputed REC price in each LTPPA bid, equal to: (i) the bid price for bundled renewable energy resources, less (ii) the projected energy price from the forward energy price curve. These imputed REC prices were compared to the statutory RPS rate caps and to

“benchmark” REC prices to determine if REC purchases under the LTPPA bids would be “cost effective” as required by §1-75(c)(1) of the IPA Act.³

The IPA also uses these imputed REC prices to determine for each procurement plan year if the RPS rate caps will be exceeded. In fact, the IPA uses only the imputed REC prices, and not the energy component of the LTPPAs, to determine if the rate caps will be exceeded. The IPA compares (i) the RPS rate cap amount per kwh times the kwh load of the ERCs to be served by the utility for the year (this is the “Renewable Resources Budget” (“RRB”)), to (ii) the sum of the product of the imputed REC price under each of the LTPPAs for the year times the contract quantity under the LTPPA. If a utility’s RRB is less than its total cost for its contracted RECs, a curtailment of REC purchases under the LTPPAs is required to reduce the dollar amount of the REC purchases for the year to no greater than the RRB. Importantly, *neither the full bundled prices of renewable energy resources under the LTPPAs, nor the energy component of the LTPPAs, are considered in this calculation.*

Therefore, in order to prevent the RPS rate caps from being exceeded, and consistent with the methodology used to determine whether and to what extent a curtailment is necessary, the Commission need only order a reduction of REC purchases, in the appropriate amount, under the LTPPAs. The LTPPA provision quoted above requires the utility (and the Seller) to implement the curtailment in accordance with the terms of the Commission’s order. There is no basis to curtail the energy portion of the LTPPAs, since the energy portion is not considered in determining if the RPS rate caps will be exceeded and a whether curtailment is needed to prevent them from being exceeded. The utilities should continue to settle the energy portion of the LTPPAs associated with curtailed RECs, based on (i) the energy price in the 2010 forward energy price curve used to determine the imputed REC price, less (ii) the hourly LMPs.

The ALJPO incorrectly concludes that the Renewables Suppliers’ proposal would “favor”

³ The IPA’s imputed REC price methodology was set forth in Appendix K to its 2010 Procurement Plan, which the Commission approved in Docket No. 09-0373.

the LTPPA suppliers and impose new costs on the utilities' ERCs. ALJPO at 175. Under the Renewables Suppliers' proposal, the LTPPA suppliers would still suffer a curtailment and a loss of payments, in the amount determined by the IPA and the Commission to be needed to prevent the RPS rate caps from being exceeded. The utility's ERCs will receive exactly the protection specified by the RPS provisions of the IPA Act. With respect to settlement of the energy portion of the LTPPAs associated with curtailed RECs, the energy price for the 2014-2015 procurement year in the IPA's 2010 forward energy price curve is higher than current hourly LMPs. However, this difference is effectively already baked into the contracts by virtue of the IPA's method (which the Commission approved) of using the 2010 forward energy price curve to separate the full Contract Prices under the LTPPAs into the imputed REC price and the price of the associated energy. Through this method, the LTPPA price incorporates a price hedge, to customers' benefit, that the energy price under the LTPPAs will not exceed the current year's price included in the 2010 forward energy price curve. If, in a future year, the day-ahead LMPs were to exceed that year's energy price in the 2010 forward energy price curve, the ERCs' energy costs under the LTPPAs would be capped at the energy price included in the 2010 forward energy price curve. In that situation, the LTPPA suppliers would bear the difference. Thus, through the LTPPA pricing and settlement terms, the ERCs have paid for a hedge, or insurance, against energy prices rising above the current year energy price included in the 2010 forward energy price curve. Requiring customers to continue to pay for this energy price hedge that is already embodied in the contracts will not impose new costs on customers.

Finally, as the ALJPO recognizes, the record on this topic is completely different from the record in last year's IPA Plan case, Docket 12-0544. ALJPO at 175. In that case, neither the Renewables Suppliers nor any other party made the proposal the Renewables Suppliers have made in this case, or articulated the basis for limiting curtailments under the LTPPAs to the REC purchase portion. In any event, it is well established that the Commission's past decisions are

not *res judicata*, and that the Commission can reach a new or different result in a future case even when faced with the same or a similar situation or set of facts.⁴ In this case, unlike Docket 12-0544, the record provides ample basis for the Commission to conclude that – in accordance with the terms of the LTPPAs – it should direct that curtailments under the LTPPAs in order to meet the RPS rate caps should be implemented by curtailing only REC purchases under the LTPPAs, and not the energy portion associated with the curtailed RECs.

B. In the Alternative, Curtailed RECs Should be Purchased at a Price Equal to the Contract Price Under the LTPPAs Less the Day-Ahead Hourly LMPs

In the alternative to their primary proposal, the Renewables Suppliers proposed that the IPA Plan should be revised to specify that the utilities (using alternative compliance payment funds accumulated in respect of sales to their customers served on hourly pricing tariffs (“hourly ACP funds”)) and the IPA (using funds in the IPA Renewable Energy Resources Fund (“RERF”)) will purchase curtailed RECs at a price consistent with the terms of the LTPPAs, specifically, (i) the Contract Price under the LTPPAs less (ii) the day-ahead hourly LMPs. This alternative would not impact the manner in which curtailments are implemented under the LTPPAs, but rather relates solely to the determination of the prices of curtailed RECs purchased by the utilities (using hourly ACP funds) and the IPA.⁵ The alternative proposal bases the prices at which curtailed RECs will be purchased solely on the terms of the LTPPAs: the Contract Price less the day-ahead hourly LMPs, which is the way in which the LTPPA suppliers and the utilities financially settle transactions under the LTPPAs, as specified in the contracts. This is the only pricing calculation to be found in the LTPPAs. The day-ahead hourly LMP is, obviously, the

⁴ *Citizens Utility Board v. Commerce Commission*, 166 Ill.2d 111, 125 (1995); *Mississippi River Fuel Corp. v. Commerce Commission*, 1 Ill.2d 509, 513 (1953); *Ameren Illinois Co. v. Commerce Commission*, 2012 IL App. (4th) 100962 at ¶¶76 and 84, 967 N.E.2d 298 (2012); *Lakehead Pipeline Co. v. Commerce Commission*, 296 Ill.App.3d 942, 956 (3d Dist. 1998).

⁵ The Renewables Suppliers recognize that the Commission does not have authority to direct the price at which the IPA purchases curtailed RECs using RERF monies. However, the Renewable Suppliers hope that, for consistency, the IPA will use the same pricing approach for the purchase of curtailed RECs with RERF monies that is adopted for the purchase of curtailed RECs by the utilities using hourly ACP funds.

current market price of energy; the difference between the Contract Price for bundled RECs plus energy is therefore, under the terms of the LTPPAs, the price of the RECs.

The ALJPO gives two reasons for rejecting the alternative proposal. The first reason is that it would produce “current economic benefits to the LTPPA suppliers at costs paid by [the utilities’] eligible retail customers.” ALJPO at 176. The ALJPO is incorrect in stating that the alternative proposal would result in costs paid by ComEd’s and AIC’s ERCs. The utilities purchase curtailed RECs using only their hourly ACP funds previously accumulated in respect of sales to customers served on their hourly pricing tariffs. There is no increase in charges to the hourly-pricing customers (nor to any of the utility’s ERCs) to fund the purchase of curtailed RECs, and the utility can only purchase curtailed RECs to the extent of its available balance of accumulated hourly ACP funds. The IPA purchases curtailed RECs using monies in the RERF, which is funded by ACP payments by alternative retail electricity suppliers (“ARES”) in respect of their sales to their customers, who, by definition, are not customers of the utilities.

The ALJPO’s second reason for rejecting the alternative proposal is that the “pricing for curtailed RECs was previously addressed in Docket No. 09-0373 and . . . there is not a sufficient basis for altering that decision based on the record in this proceeding.” ALJPO at 176. It is not correct, however, that the pricing for curtailed RECs was determined in Docket 09-0373. There was no issue as to curtailed RECs in Docket 09-0373; the need to curtail REC purchases under the LTPPAs to avoid exceeding the RPS rate impact caps arose for the first time in last year’s IPA Plan case, Docket 12-0544. What was addressed in Docket 09-0373 was the way to determine the imputed price of RECs under the LTPPAs, as described in §I.A above, namely, (i) the LTPPA Contract Price less (ii) the energy price for the current year specified in the IPA’s 2010 forward energy price curve. It is this basis for determining the imputed REC prices under the LTPPAs, and the manner in which the imputed REC prices to determine whether and to what extent curtailments of REC purchases are needed to avoid exceeding the RPS rate caps, that

underlies the Renewables Suppliers' primary proposal (discussed in §I.A). The Renewables Suppliers would strongly prefer that the Commission adopt their primary proposal rather than their alternative proposal.

II. EXCEPTIONS TO §II.E.7 OF THE ALJPO

A. The Utility Load Forecasts Adopted by the IPA Plan Do Not Adequately Take into Account the Risk of Re-Migration of Eligible Retail Customer Load from ARES to the Utilities and Should Be Increased in Consideration of this Risk

The utilities' "base" load forecasts, which the IPA Plan adopts, do not adequately take into account the significant risk of re-migration of ERCs from ARES to the utilities during the 2014-2015 procurement year. In fact, numerous supply contracts between ARES and municipalities for service to residents under municipal aggregation programs will be expiring during 2014 and (due to the expiration of some of the utilities' higher-priced legacy contracts) the renewal or replacement ARES contracts may not offer prices that are competitive with the utilities' tariff prices to available to ERCs.⁶ Despite this, the utility load forecasts actually predict an increase in the percentage of ERCs who will take service from ARES. The IPA Plan recognizes and extensively discusses the risks that significant numbers of customers may re-migrate to the utilities during the 2014-2015 procurement year,⁷ yet the Plan adopts the utilities' "base" load forecasts, which do not adequately account for this possibility.

Each utility's "base" load forecast is considerably closer to its "low" load forecast (which assumes even greater switching to ARES) than to the utility's "high" load forecast. Renewables

⁶ As shown on pages 37-38 of the IPA Plan, over one half of the current supply contracts for municipal aggregation programs will expire in the 2014-2015 procurement year. Based on the information posted on the Municipal Aggregation page at the Commission's [www.pluginillinois](http://www.pluginillinois.com) website as of October 25, 2013, there are over 300 municipal aggregation supply contracts in Illinois that are scheduled to expire between November 2013 and December 2014. These include many large Chicago-area municipalities such as Aurora, Arlington Heights, Bolingbrook, Buffalo Grove, Downers Grove, Evanston, Mount Prospect, Oak Park, Orland Park and Schaumburg, and "downstate" municipalities such as Belleville, Champaign, Decatur, Edwardsville, Peoria, Rockford and Urbana.

⁷ See the multiple discussions of the risk of customers switching back from ARES service under municipal aggregation programs to utility service at pages 11, 27, 37-40 and 91 of the IPA Plan. This discussion in the IPA Plan is summarized and highlighted at pages 16-19 of the Renewables Suppliers' Objections and at pages 177-178 of the ALJPO.

Suppliers' Objections at 15-16; ALJPO at 177. The Renewables Suppliers recommended that the 2014-2015 load forecasts adopted for purposes of the IPA Plan should be adjusted, in consideration of the risk of re-migration, to values that are the midpoints between each utility's "high" and "low" load forecasts. The Renewables Suppliers proposed this adjustment to the load forecasts as a simple and straightforward way to give greater recognition to the risk of customer switching from ARES back to the utilities as municipal aggregation supply contracts are renewed at prices that lack a competitive advantage to the utilities' tariffed offerings.

The ALJPO rejects the Renewables Suppliers' recommendation. The ALJPO's basis for its conclusion is that the Renewables Suppliers' proposal is overly simplistic and that the Renewables Suppliers have not provided specific objections to the utilities' mathematical load forecasting models or to specific inputs to the models. ALJPO at 193. However, the Renewables Suppliers are not taking issue with the utilities' forecasts of overall electricity demand from ERCs in their service areas, or with the methodologies, models and inputs used by the utilities to develop those forecasts. Rather, the load forecast components that specifically concern the Renewables Suppliers are the assumptions concerning the extent of customer switching by ERCs between ARES supply and utility supply service during the procurement year – that is, how the total load of residential and small commercial customers will be divided between the utilities and the ARES. This part of the forecast is not dependent on formulas or methodologies – *i.e.*, on plugging projected values of inputs into a mathematical equation or computer model that produces a result – or on the utilities' years of forecasting experience. Instead, it is based on specific, current, program-by-program information on the status of municipal aggregation programs, which ones are up for renewal, which ones have been or may be terminated, and the comparative pricing between the ARES' supply contracts (both existing and renewal) for municipal aggregation programs and the utilities' prices for electric supply service to ERCs. Thus, this issue is not one of competing "methodologies;" it is based on market

intelligence and judgment, rather than time-tested mathematical models and inputs.⁸

The ALJPO's conclusion fails to address the underlying concern – which, as noted above, is expressed by the IPA as well as by the Renewables Suppliers – that the “base” load forecasts do not adequately take into account the significant risk of customer re-migration from ARES to the utilities during the 2014-2015 procurement year. The Commission should adopt the Renewables Suppliers' recommendation to use load forecast values that are the midpoint values between the utilities' “high” and “low” load forecasts, as a simple and straightforward way to give greater recognition in the forecasts to the risk of re-migration. As an alternative, the Commission could adopt Wind on the Wires' proposal that the load forecasts should be modified to reflect no additional customer switching to ARES during the 2012-2015 procurement year. *See* ALJPO at 186 and 192.

B. The Commission Should Provide All Parties with a Meaningful Opportunity to Comment on the Utilities' Spring 2014 Load Forecasts and Should Adopt, Adjust or Reject the Spring 2014 Load Forecasts in an Order

The IPA Plan contemplates that the utilities will submit load forecast updates in Spring 2014 and that these load forecast updates, if accepted by consensus of the IPA, Commission Staff, the Procurement Administrator(s) and the Procurement Monitor, will be the final load forecast values used to determine the utilities' supply requirements for the 2014-2015 procurement year, whether the RPS rate impact caps will be exceeded, and whether and to what extent curtailments of REC purchases under the LTPPAs will be required. Given the importance of the Spring 2014 load forecasts, the Renewables Suppliers recommended that the Spring 2014 forecasts should be filed with the Commission, subject to a brief (7 to 14 days) comment period, and then adopted, adopted with adjustments, or rejected, in an order of the Commission – rather than by decision of the IPA, Staff and the two procurement consultants, with no opportunity for

⁸ Moreover, this proceeding does not provide a realistic opportunity for parties to investigate the utilities' load forecasting methods, models and inputs, even when one takes into account the 30-day posting of the IPA Plan before it is formally filed with the Commission. Once the proposed Plan is filed with the Commission, other parties have only five business days to submit objections. Further, there is no opportunity for discovery (in the informal or formal phases), no testimony and no hearing.

input from interested parties by way of comments and no actual decision by the Commission. *See* ALJPO at 179-182. The Renewables Suppliers acknowledge that they have an economic interest in the final load forecast values that are adopted in Spring 2014. However, for the Commission to subject LTPPA suppliers to curtailments of deliveries and reduced payments under their contracts based on load forecasts which the suppliers are given no opportunity to comment on and are not adopted by order of the Commission would be extremely problematic.

The ALJPO rejects the Renewables Suppliers' proposal, stating that (1) the Renewables Suppliers have not raised any "substantive issue" with the utilities load forecasts in this case, and (2) since the Renewables Suppliers have not raised any substantive issues with the forecasts after having more than 30 days to review them in the draft and as-filed IPA Plan, it is unlikely they would identify any issues in a comment period on the Spring 2014 updates. *Id.* at 194. The ALJPO misses the point of the proposal. The key difference between the utilities' load forecasts submitted to the IPA in July 2013 and the Spring 2014 load forecast updates will be the new information that will be available on the status of municipal aggregation programs, ARES contract renewals for those programs, and comparative pricing between the ARES' pricing (particularly in contracts for municipal aggregation programs) and the utilities' tariffed pricing. The continuously emerging information on the factors driving customer switching and re-migration may cause the customer switching assumptions, and thus the overall load forecasts, to change materially from the time of the utilities' July 2013 forecast submissions to the IPA to their Spring 2014 load forecasts. As noted earlier, over one half of the current supply contracts for municipal aggregation programs will expire in the upcoming procurement year, with over 300 municipal aggregation supply contracts scheduled to expire between now and December 2014. Many of these municipalities will be negotiating renewal ARES supply contracts and announcing the price offers under the renewal contracts during the next 3 to 4 months. Neither the utilities, nor the IPA, Staff, the Procurement Administrator or the Procurement Monitor, will

have a monopoly on relevant market information. Other parties will also have relevant market intelligence, and should be allowed to comment on the utilities' Spring 2014 load forecasts.

Accordingly, the Commission should order that: (1) the utilities should file their Spring 2014 load forecast updates with the Commission; (2) there should be a brief period established during which interested parties can submit comments; and (3) the Commission should issue a supplemental order either adopting the updated load forecasts, adopting them with adjustments, or rejecting the updated load forecasts and directing that the load forecasts adopted in the Commission's December 2013 order continued to be used for purposes of the 2014 IPA Plan.

III. CONCLUSION

The Renewables Suppliers respectfully request that the Commission, in arriving at its final order in this docket, modify the ALJPO Proposed Order as set forth in these Exceptions.

Respectfully submitted,

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ATTACHMENT 1

PROPOSED REVISED TEXT FOR

SECTION II.D.7 OF THE ALJPO

7. Commission's Conclusions

The RS primary proposal with regard to renewable resources is that the IPA Plan be revised to state, and the Commission order, that only REC purchases under the LTPPAs, and not the energy portion of the LTPPAs, should be curtailed for the 2014-2015 procurement year. The RS recommends the Commission order that the energy component of the LTPPAs associated with the curtailed RECs not be curtailed, but rather should be settled by the electric utilities based on the energy price from the 2010 forward energy price curve less the day-ahead hourly LMP for each hour. WOW endorses RS' proposal.

The RS proposal is opposed by ComEd, AIC, and Staff. Among other things, those opposed to the RS proposal argue that it is in direct conflict with the terms of the LTPPA contracts and would adversely affect the eligible retail customers of ComEd and AIC. If the Commission finds Staff, AIC, and ComEd's arguments that the contract provides for curtailment of energy as well as RECs, the IPA strongly urges the Commission to require all parties to adhere to the terms of the contract. The RS refutes the arguments of ComEd, AIC, and Staff. The RS argues that the LTPPAs were not the result of arms length negotiations and the Commission possesses the authority to "direct" a reduction of something "other" than "the quantity of Product purchased" so that the amount of expenditures are recoverable.

The RS also disputes arguments that its proposal would violate Section 16-111.5(e)(3) of the PUA because it would result in the utilities purchasing electricity at prices that have not been evaluated through benchmarks. The utilities also argue that its proposal for settling the energy portion of the LTPPAs associated with curtailed RECs will adversely impact their eligible retail customers because the eligible retail customers will have to pay the difference between the current market price of energy (the day-ahead LMPs) and the energy prices in the IPA's 2010 forward energy price curve. In response, the RS notes the current year energy price from the 2010 forward energy price curve is higher than the day-ahead LMPs and insists the payment of this amount is consistent with the terms of the LTPPAs and with the IPA's evaluation of the bid prices at the time of contract award using the 2010 forward energy price curve.

Based on its review of the record and the parties' arguments, the Commission believes that the RS' proposal should be adopted. The RS' proposal has not been presented in any previous procurement plan case, including Dockets 09-0373 and 12-0544, and the Commission is not bound by the previous implementation of curtailments of the LTPPAs in the 2013-2014 procurement year. The Commission rejects the arguments that adopting the RS' proposal would require the Commission to rewrite the LTPPAs. As discussed in Section II.D.1, above, the terms of the LTPPAs clearly provide for a Commission order determining the manner and extent to which purchases should be curtailed under the LTPPAs in order to avoid exceeding the rate impact caps, and that the parties to the LTPPAs must then implement the curtailment as ordered by the Commission. The methodology adopted by the IPA for determining whether the rate impact caps are exceeded and, if so, the extent to which curtailments must be imposed under the LTPPAs, is based solely on use of the imputed REC prices determined using the energy prices in the IPA's 2010 forward energy price curve. The Commission has previously approved the use of this method. The Commission agrees with the RS that since the determination of whether the rate impact caps are exceeded and the extent of curtailment of purchases required under the LTPPAs is based solely on the imputed

prices of RECs in the LTPPAs, there is no basis to also curtail the energy portion of the LTPPAs. Only REC purchases under the LTPPAs need to be curtailed. This conclusion flows directly and logically from the method used to determine if the rate impact caps will be exceeded and, if so, the extent of curtailment of REC purchases required. Correspondingly, it also follows directly that the parties to the LTPPAs should continue to settle the energy associated with curtailed RECs, based on the difference between the applicable energy price in the IPA's 2010 forward energy price curve and the day-ahead hourly LMPs, consistent with the settlement procedure provided for in the LTPPAs. Moreover, the Commission agrees that the LTPPAs are not contracts that were negotiated at arms-length between two private commercial parties, but rather are contracts whose terms were dictated to the suppliers by the IPA and the Commission, as specified in Section 16-111.5 of the Public Utilities Act.

Accordingly, the Commission directs that the curtailments of purchases under the LTPPAs by ComEd and AIC as calculated in accordance with the methodology used by the IPA (and as specified in Appendix K to the 2010 procurement plan) using the final load forecasts adopted for purposes of the 2014-2015 procurement plan, shall be implemented solely by reducing ComEd's and AIC's purchases of RECs under the LTPPAs. Correspondingly, the parties to the LTPPAs shall continue to settle the energy associated with the curtailed RECs under the LTPPAs based on the difference between the energy price or prices for the applicable periods in the IPA's 2010 forward energy price curve, less the day-ahead hourly LMPs.

~~The RS suggests the Commission should unilaterally change the terms of the contract to favor one party over the other party to the contract. The question of whether the Commission has authority to do so is not a black and white one. On the one hand, the RS is correct that the LTPPAs were not the result of arms length negotiations. On the other hand, the LTPPAs were specifically developed to allow for the possibility of curtailments and yet, the definition of Product contained therein specifically included both the energy and REC component and that definition was accepted by both parties to the LTPPAs.~~

~~Putting aside the question of whether the Commission possesses authority to impose such a change to the LTPPA contracts, in this instance the Commission is disinclined to do so. In the current situation, such a change would favor the RS and would, ultimately, impose the cost on ComEd and AIC eligible retail customers. In addition, the Commission notes that such a change would modify the LTPPA contracts from the manner in which they were intentionally drafted to protect eligible retail customers. In this instance, the Commission concludes such a change is not in the public interest and will not be adopted. Finally, the Commission notes, despite the fact that the record in this proceeding is different than the one in Docket No. 12-0544, the Commission previously determined that the curtailment of LTPPAs should include both energy and REC. The Commission believes the record in this proceeding supports the same conclusion.~~

As an alternative to its primary proposal, the RS proposes for the IPA Plan to be revised to specify that the utilities (using hourly ACP funds) and the IPA (using RERF monies) will purchase curtailed RECs under the LTPPAs at a price equal to the LTPPA Contract Price less the day-ahead hourly LMPS for the energy associated with the curtailed RECs. This proposal is again supported by WOW.

The RS alternative proposal is opposed by ComEd, Staff, and AIC. The IPA states that the question of using hourly REC prices for curtailed RECs is outside the scope of this proceeding to the extent that it relates to payments made from the RERF.

AIC says the RS' alternative proposal appears to be in violation of the statute which requires a process of benchmarking, request for proposals, sealed bidding and selection of winners based on price. Staff asserts the RS' alternative proposal to use highly variable and uncertain REC spot prices for settlement purposes would leave ratepayers exposed to considerable risk, if spot prices were to fall and would almost surely result in payments for RECs that exceed those under the IPA's pricing proposal.

ComEd argues the Commission already decided in Docket No. 09-0373 that the appropriate price for purchasing curtailed RECs is equal to the imputed REC price. ComEd also asserts that further increasing the price of curtailed RECs purchased with ComEd customer ACP funds would enable the LTPPA suppliers to be kept whole, but its eligible retail customers would not benefit from this action. The RS believes, contrary to ComEd's argument, its alternative proposal would not result in any increased charges to the utilities' retail customers. The RS also argues the current situation creates a disincentive to the development and construction of new renewable resource generating facilities in Illinois.

In light of the Commission's decision to adopt the RS' primary proposal, as discussed above, it is unnecessary to adopt the RS's alternate proposal. However, the Commission notes that the alternate proposal is appropriately based directly on the terms of the LTPPAs and would represent an appropriate calculation of the price at which curtailed RECs should be purchased were that to be necessary. Based on the RS's primary proposal, however, which the Commission is adopting, ComEd and AIC should purchase curtailed RECs from the LTPPA suppliers, to the extent of the utilities' ACP funds accumulated in respect of their sales to customers under their hourly pricing tariffs, at the imputed REC prices calculated by deducting the applicable energy price in the IPA's forward energy price curve from the Contract Price under each LTPPA.

~~Currently, the LTPPA suppliers are operating under the LTPPA contracts to which they agreed and are reimbursed in the manner the Commission has deemed appropriate. It appears to the Commission that the only basis for the RS' alternative proposal is to produce current economic benefits to the LTPPA suppliers at costs paid by ComEd's and AIC's eligible retail customers. While the Commission fully understands the RS incentives, it is not clear how or why shifting costs from the suppliers to the utilities' customers is fair or in the public interest. The Commission notes that pricing for curtailed RECs was previously addressed in Docket No. 09-0373 and finds there is not a sufficient basis for altering that decision based on the record in this proceeding.~~

~~With regard to the RS argument regarding the incentives to construct new renewable resource facilities in Illinois, the Commission notes that there are competing objectives relating to renewable resources and balancing those competing interests is a difficult task. The Commission declines to adopt the RS alternative proposal in this proceeding as it is not in the public interest.~~

ATTACHMENT 2

PROPOSED REVISED TEXT FOR

SECTION II.E.7 OF THE ALJPO

7. Commission's Conclusion

The Commission will first address the RS' proposal for adoption of load forecast values that are midpoint values between the utilities' high and low load forecasts because it claims such forecasts would more appropriately recognize that the most significant risk associated with the 2014-2015 procurement year is the risk of substantial re-migration of eligible retail customer load to the electric utilities. WOW believes the utilities' base load forecasts should reflect no changes due to load migration or in the alternative should reflect a migration of load from the ARES to the utilities as proposed by the RS.

ComEd, AIC, and the IPA, oppose the RS' proposal. While the three parties each filed individual Responses to Objections and Replies thereto, it appears to the Commission that substantively many of the arguments are similar and in the interest of efficiency they will be discussed generically with regard to this issue. They primarily argue that the RS proposal artificially creates an average of values that were not meant to be averaged. They claim the utilities develop their base case forecast first; the high and load cases are then excursion cases where variables and assumptions are changed from the base case based upon informed modeling. They contend the base case forecasts are inherently not meant to be symmetrical, which is why the base case is not the midpoint between the high and low forecasts. They believe the rationale behind any changes to the base, high, or low forecast should be based on the specific inputs to that specific forecast, not simple averaging. They also claim the RS proposal increases the risk of additional costs being imposed on eligible retail customers to the benefit of the LTPPA suppliers.

In reviewing load forecasts during previous procurement proceedings it has become obvious to the Commission that load forecasting is a complex undertaking. As the Commission understands it, the load forecasts are based upon mathematical models with various independent variables. The values (expected, high, and low) of the independent variables are estimated and the load forecasts are produced. However, the RS have made it clear that they are not challenging, and are not stating any concerns with, the utilities' forecasts of the overall demand for electricity within their service territories or the models and inputs used in deriving those overall forecasts. Rather, the issue that the RS raise with respect to the forecasts is the assumptions as to how that total load will be divided between utility supply service and ARES supply service, particularly under municipal aggregation programs. As the Commission understands it, this part of the forecasts is not based on complex mathematical models supported by a long history of actual input and output data. The Commission agrees with the RS and WOW that, in light of the fact that the ARES supply contracts for a significant number of municipal aggregation programs will be up for renewal or replacement in 2014 and 2015, and in light of emerging wholesale electricity market price information and the roll-off of some higher priced legacy utility supply contracts, there is a risk of significant re-migration of eligible retail customer load from ARES back to the utilities. The Commission agrees with the analysis of this issue in the IPA Plan, particularly at pages 37-40, but based on the IPA's analysis, the Commission does not agree with the IPA's decision to adopt the utilities' "base" load forecasts, both of which actually assume a further decrease in the percentage of the total customer load that will be served by the utility in the 2014-2015 procurement year. The Commission also agrees that the statutory time periods within which this proceeding must be conducted

do not provide a reasonable opportunity for parties to litigate issues relating to the utilities' load forecasts. While the Commission acknowledges that averaging the utilities high and low forecasts is something of a mathematical exercise, the Commission accepts the RS's proposal, in the context of this proceeding, as a simple and straightforward way to recognize the significant likelihood that eligible retail customers will be migrating back to the utilities from ARES (particularly from municipal aggregation programs) in 2014 and 2015. If the RS had objections with respect to some aspect of the mathematical models or the specific inputs to the models, the Commission would certainly be interested in its view. While the RS asserts the nature and tight time frames for this proceeding do not provide a reasonable opportunity to develop and present a new methodology, the Commission believes that is precisely one purpose of this proceeding.

~~In the 2013 procurement proceeding, the Commission observed that there have been few substantive disputes regarding the underlying load forecasts of AIC or ComEd. The Commission believes this is true primarily because load forecasting is complex, the utilities have extensive experience and expertise in the area of load forecasting and the utilities have no economic incentive to develop a biased load forecast. The Commission believes actual experience has proven these observations true and AIC and ComEd have performed quite well in developing load forecasts.~~

~~It is not entirely clear that the RS have reviewed the load forecasts in any meaningful detail. Instead, it appears the RS notice what it viewed as an anomaly, asymmetric load forecasts, and proposed a simple solution. In the Commission's view, the RS proposal is overly simplistic. As ComEd and the IPA point out the load forecasts are intentionally asymmetrical. In conclusion, the record of this proceeding contains no basis for adopting the RS proposal.~~

In addition to the proposal discussed immediately above, which the Commission is adopting, the RS recommends that the Commission, in its order in this docket, provide that: (1) the utilities should file their Spring 2014 load forecast updates with the Commission in this docket; (2) there should be a brief period (7 to 14 days) after the Spring 2014 load forecasts are filed during which interested parties can submit comments on the updated load forecasts; and (3) the Commission should then issue a supplemental order in this docket either adopting the updated load forecasts, adopting the updated load forecasts with adjustments, or rejecting the updated load forecasts and directing that the load forecasts adopted in the Commission's December 2013 order in this docket be used for purposes of the 2014 Procurement Plan, including the final determinations of whether the RPS rate impact limits are exceeded and curtailments of REC purchases under the LTPPAs are needed for either electric utility. WOW makes a similar suggestion.

This RS proposal is opposed by ComEd, AIC, the IPA, and Staff. Among other things, they argue that RS' proposal is inconsistent with the Commission's prior practice which they believe has been effective. They also claim that the Spring load forecast is essentially an update of inputs to the load forecasting model, which is to be litigated in this proceeding. Finally, they believe any RS' concerns about the review of the forecasts should be allayed by the fact that the utility forecasts are subject to review by the IPA, Staff as well as the Procurement Administrator and Monitor, should they be retained.

The Commission understands that the RS is concerned with the potential impact of any updated load forecast as it has an economic interest in the potential impact on LTPPA curtailment. On the other hand, the Commission is reassured that those traditionally responsible for preparing and reviewing the updated forecast have no economic incentive to produce, or allow to be produced, a biased forecast. That stated, the Commission recognizes that the final load forecasts adopted for purposes of the IPA Plan are extremely important to numerous parties affected by the Plan, not just the RS. The Commission further agrees that there may be significant new information available by the Spring 2014 that will be relevant to the assumptions as to the extent to which eligible retail customers will continue to migrate to and be served by ARES, particularly under municipal aggregation programs, or will migrate back to utility supply service. The Commission agrees with the RS that the final load forecasts on which the Plan is based should not be adopted without the opportunity for interested parties to provide comment on the Spring 2014 updates, particularly since other parties may have relevant information and insight on the customer switching issue. Finally, the Commission believes that the final load forecasts should be adopted pursuant to an order of the Commission. The Commission believes that the practice of "pre-approval" of the load forecasts for purposes of the Plan is inappropriate, even if it has been done in prior years, particularly in light of the significant additional information that may be reflected, or available to evaluate, the Spring 2014 load forecast updates. Accordingly, the Commission finds and directs that (1) the utilities should file their Spring 2014 load forecast updates with the Commission in this docket; (2) interested parties will have ten (10) days after the filing to submit comments on the updated load forecasts; and (3) the Commission will then issue a supplemental order in this docket either adopting the updated load forecasts, adopting the updated load forecasts with adjustments, or rejecting the updated load forecasts and directing that the load forecasts adopted in this order be used for purposes of the 2014 Procurement Plan, including the final determinations of whether the RPS rate impact limits are exceeded and curtailments of REC purchases under the LTPPAs are needed for either utility. The Commission notes the RS request a brief period of 7 to 14 days to submit comments on the updated forecast. Based on the August 15, 2013 posting of Draft Plan by the IPA, the RS had significantly more time to review the load forecasts than it proposes to review the updated forecasts. The nature of the RS' review, comments, and recommendations regarding the load forecasts suggest to the Commission that approving the RS' proposal would serve no meaningful purpose.

~~As noted above, if the RS had objections with respect to some aspect of the mathematical models or the specific inputs to the models, the Commission would certainly be interested in its views because that is one purpose of this proceeding. Given that the RS has not raised a substantive issue with AIG's or ComEd's forecast, the Commission is not inclined to give its recommendations serious consideration.~~

~~—The Commission also observes that the IPA is an independent state agency created specifically to develop the Procurement Plan as well as to implement the approved Plan. While the Staff, Procurement Administrator, and Procurement Monitor participate in and oversee the IPA's activities, the IPA has responsibility for many of the procurement activities. Despite the concerns expressed by the RS, the Commission is comfortable the process it has previously used has been and will continue to be effective and successful.~~

~~As in previous procurement proceedings, between the IPA, Staff, and ComEd/AIC (as well as the Procurement Administrator and Monitor, should they be retained), the Commission believes that technical issues related to load forecasting will be objectively vetted and appropriately addressed. The Commission rejects the RS' proposals.~~

~~The Commission's adoption of the RS' proposal also addresses WOW's concern that says the Plan is silent as to whether these the Spring 2014 load forecasts are to be made publically available. WOW notes that in previous years, ComEd has filed its November load forecast in the docket and suggests the utilities could do the same with their Spring load forecasts. WOW believes the data should also be filed on e-docket since the utilities file their November forecasts and post them on e-docket. The proposal to make the Spring forecasts was not contested and Staff volunteers to post the updates on the Commission website. The Commission approves WOW's recommendation and concludes the information should be filed on e-docket in this proceeding.~~

~~According to AIC, the Plan should be clear that it is seeking Commission pre-approval of the November 2014 through May 2015 updated forecast in this Plan and through consensus of the aforementioned parties in July 2014. AIC also believes the forecast update for November 2014 through May 2015 should be submitted to the IPA independent of the five year forecast (June 2015 through May 2020) associated with the next Plan. AIC says since the November 2014 through May 2015 forecast update is pre-approved in this Plan, it will not become part of the docketed proceeding in the next Plan. AIC believes the language as currently proposed in the Plan could lead to confusion and hence recommends these clarifications. The IPA, Staff, and ComEd all concur in AIC's proposed this clarifications, and no party opposed it them. The Commission concludes that AIC's proposed clarification is ~~clarifications are~~ reasonable and should be adopted.~~

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused the Brief on Exceptions of the Renewables Suppliers to the Administrative Law Judge's Proposed Order in ICC Docket 13-0546 to be served on each of the persons on the Service List by e-mail on November 21, 2013.

/s/ Owen E. MacBride

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ICC DOCKET 13-0546

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