

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>The Illinois Power Agency</b>	)	
	)	
<b>Petition for Approval of the</b>	)	<b>Docket No. 13-0546</b>
<b>2014 IPA Procurement Plan pursuant to</b>	)	
<b>Section 16-111.5(d)(4) of the</b>	)	
<b>Public Utilities Act.</b>	)	

**APPLICATION FOR REHEARING AND RECONSIDERATION**  
**OF THE RENEWABLES SUPPLIERS**

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**Attorney for the Renewables Suppliers**

**January 21, 2014**

Pursuant to §10-113 of the Public Utilities Act, 20 ILCS 5/10-113, and 83 Illinois Administrative Code §200.880, the Renewables Suppliers<sup>1</sup> submit this Application for Rehearing and Reconsideration of the Commission's order in this docket dated December 18, 2013 and served on December 20, 2013 (the "Order"). For the reasons set forth herein, the Renewables Suppliers request rehearing and reconsideration of the Commission's conclusions in §IV.D.7, at pages 179-181, of the Order concerning the Renewables Suppliers' proposals relating to the implementation of curtailments of purchases under the Renewables Suppliers' long-term power purchase agreements ("LTPPAs") with the electric utilities and the purchase price for renewable energy credits ("RECs") that are curtailed under the contracts but are then purchased by the electric utilities using alternative compliance payment ("ACP") funds accumulated in respect of sales to their customers served under hourly pricing tariffs ("hourly ACP funds") and by the Illinois Power Agency ("IPA") using funds accumulated in the Renewable Energy Resources Fund ("RERF").

The Renewables Suppliers made a primary proposal and a secondary, alternative proposal concerning curtailments under the LTPAAs. The Renewables Suppliers' primary proposal was that the Commission should direct that, in the event it is determined a curtailment of purchases under the LTPPAs is required to avoid exceeding the renewable portfolio standard ("RPS") rate caps of §1-75(c)(2) of the IPA Act (20 ILCS 3855/1-75(c)(2)), only purchases of RECs under the LTPPAs should be curtailed, and the utilities should continue to settle the energy associated with the curtailed RECs at a price equal to the current year energy price in the IPA's 2010 forward

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<sup>1</sup> 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. The Order referred to the Renewables Suppliers as the "RS."

energy price curve less the current Day-Ahead Hourly Locational Marginal Prices in the applicable load zone (“Day-Ahead LMP”). The Renewables Suppliers’ alternative proposal was that curtailed RECs should be purchased by the electric utilities, using their accumulated hourly ACP funds, and by the IPA, using funds in the RERF, at prices equal to the Contract Prices under the LTPPAs less the Day-Ahead LMPs.<sup>2</sup>

At page 181 of the Order, the Commission stated:

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. Should the RS provide the Commission with sufficient evidence to prove this proposal would not harm utility customers and would be in the public interest, the Commission may be inclined to revisit the issue.

Although it is not clear whether the above-quoted text was intended to apply to both the Renewables Suppliers’ primary and alternative proposals, the Renewables Suppliers seek rehearing in order to present evidence to show (among other things) that neither their primary proposal nor their alternative proposal would harm utility customers and that each proposal would be in the public interest.

### **Renewables Suppliers’ Primary Proposal**

1. With respect to the statements in the Order that the Renewables Suppliers’ proposal “is not in the public interest” and that “[s]hould the RS provide the Commission with sufficient evidence to prove this proposal would not harm utility customers and would be in the public interest, the Commission may be inclined to revisit the issue,” the Renewables Suppliers request rehearing to present evidence and argument on the following points:

- a. It is in the public interest that the legitimate expectations of the suppliers under the LTPPAs as to the revenues they would receive under the LTPPAs not be

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<sup>2</sup> With respect to their alternative proposal, 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, as well as for fairness and to avoid arbitrage opportunities, the IPA will use the same pricing approach for the purchase of curtailed RECs with the RERF that is adopted for the purchase of curtailed RECs by the utilities using hourly ACP funds.

defeated, for at least three reasons.

i. First, long-term contracts such as the LTPPAs are frequently used by renewable energy providers as the basis for raising the capital necessary for construction of the renewable energy facility that will supply the energy and RECs under the contract, either specifically to support raising the capital through a project finance approach, or as a revenue source to support balance sheet financing of the facility. The LTPPA curtailments reduce the revenues that the LTPPA suppliers expected to receive under their contracts, create uncertainty as to the revenues that can be expected to be received each year under the LTPPAs, and reduce the value of the renewable generating assets that are being used to produce renewable energy and RECs pursuant to the LTPPAs. If the legitimate revenue expectations of renewable energy suppliers under long-term contracts such as the LTPPAs are defeated, then in the future, prospective renewable energy suppliers may be unable to obtain the financing to support new projects in Illinois, and in any event may be unwilling to develop new projects in Illinois. This would deprive the State of the economic development benefits associated with such projects, and could lead to a reduced supply, and thus higher prices, in the long-term.<sup>3</sup> Additionally, the revenue reductions and uncertainty associated with the LTPPAs due to the curtailments will increase the cost of capital and financing costs for future renewable energy resources projects, which ultimately will be reflected in higher prices for consumers for electricity from renewable resources and for RPS compliance.

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<sup>3</sup> Section 1-5(4) of the IPA Act, 20 ILCS 3855/1-5(4), states a legislative finding that “Procuring a diverse electricity supply portfolio will ensure the lowest total cost over time for adequate, reliable, efficient, and environmentally sustainable electric service.”

ii. Second, revenue uncertainty and the inability to receive the revenues anticipated under the LTPPAs disincentivizes the construction of independent renewable projects, which is the antithesis of the legislature's purpose in enacting the RPS.<sup>4</sup> Part of the reason for promoting renewable generation is the beneficial impact it has on the environment. Renewable generation is a clean source of energy that protects our environment by reducing emissions that contribute to smog, acid rain, and global warming. It is not in the public interest to discourage renewable generation projects in Illinois.

iii. Third, the reason that curtailments have been required under the LTPPAs is that after the long-term renewables purchases were approved by the Commission as part of the IPA's 2010 Plan,<sup>5</sup> and the long-term renewables procurement event was held and the LTPPAs were awarded in 2010, municipalities began to establish municipal aggregation programs pursuant to referenda authorized by §1-92 of the IPA Act.<sup>6</sup> The first successful referenda (for approximately 20 municipalities) were held in 2011 but a much more significant number of referenda were held beginning in 2012. The referenda authorized the municipalities to establish municipal aggregation programs in which all of the eligible retail customers in a municipality (other than those customers who affirmatively opt out of the program) are supplied by an alternative retail supplier ("ARES"). Many such referenda were held and passed in 2012 and 2013, the municipal aggregation programs they authorized were established, and many eligible retail customers in municipalities with aggregation programs were

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<sup>4</sup> Section 1-5(7) of the IPA Act, 20 ILCS 3855/1-5(7), also states a legislative finding that "Energy efficiency, demand-response measures, and renewable energy are resources currently underused in Illinois."

<sup>5</sup> Docket 09-0373, Order dated December 28, 2009.

<sup>6</sup> 20 ILCS 3855/1-92 (2010).

switched to the ARES. A significant factor behind the success of the referenda and the resulting customer switching was that the ARES' market-price-based offerings were lower than the utilities' tariffed prices for eligible retail customers. The utilities' prices have been higher than the ARES' prices in this time period because the utilities were allowed to recover the costs of certain legacy or longer-term contracts with prices that were above current market prices.

For the above reasons, the municipal aggregation programs have been very beneficial to eligible retail customers in terms of lower electricity prices, but the LTPPA suppliers have been forced to experience curtailments as a result of the municipal aggregation programs and the associated customer switching to ARES, which (under the method that has been used to date to implement the curtailments) has prevented the LTPPA suppliers from receiving revenues that they had a legitimate expectation of receiving when the LTPPAs were bid and awarded. It is not necessary for the LTPPA suppliers to forego the energy settlement revenues associated with curtailed RECs in order to achieve the statutory and contractual objective of protecting eligible retail customers by keeping RPS compliance costs within the rate caps. In these circumstances, where the underlying cause of the LTPPA curtailments (the municipal aggregation programs) has produced significant cost savings for retail electricity customers, the LTPPA suppliers should not be forced to forego recovery of these energy settlement revenues under their contracts.

b. The objective of curtailments under the LTPPAs, which is to protect customers against paying more for renewable energy resources than the RPS rate cap amounts established pursuant to §1-75(c)(2) of the IPA Act, is completely achieved by the curtailment of REC purchases under the LTPPAs at the imputed REC prices as

calculated by the IPA in accordance with the procedure in Appendix K to the IPA's 2010 Procurement Plan approved in Docket 09-0373. Curtailment of the energy associated with curtailed RECs is not necessary to achieve this objective or to protect retail customers from paying more than the RPS rate caps. The method of implementing curtailments currently approved by the Commission, however, requires the Renewables Suppliers to forego more revenues under the LTPPAs than is necessary to achieve the statutory and contractual objectives of protecting customers from paying more for renewable energy resources than the RPS rate cap amounts. This in turn has the impacts described in paragraph 1.a above, which are not in the public interest.

c. The Renewables Suppliers' primary proposal would require that the utilities continue to settle the contracted energy under the LTPPAs that is associated with curtailed RECs (*i.e.*, the energy that is generated to produce the curtailed RECs), at a settlement price equal to the current year energy price contained in the IPA's 2010 forward energy price curve that was used to evaluate the LTPPAs, less the Day-Ahead LMP. This is the same settlement price that applies to the energy associated with non-curtailed RECs under the LTPPAs. The utilities are allowed to recover this energy settlement amount through their tariffed charges to their eligible retail customers. The Renewables Suppliers' proposal does not ask or require that the utilities (or, ultimately, their eligible retail customers), pay for any costs that they are not already paying for under the LTPPAs. Further, adoption of this proposal would not result in the RPS rate caps being exceeded, since the curtailment of REC purchases under the LTPPAs is sufficient to prevent the RPS rate caps from being exceeded.

d. The LTPPAs provide an energy price hedge for the benefit of the utilities' eligible retail customers. The hedge or capped energy price in the LTPPAs is the current year energy price contained in the IPA's 2010 forward energy price curve, which is used

to determine the imputed REC prices in the LTPPAs. The energy price hedge is a contractual component of the LTPAAs that is of value to the utilities and their eligible retail customers and which the utilities' eligible retail customers are paying for under the terms of the LTPPAs. The energy price hedge protects the eligible retail customers from having to pay more for electric energy under the LTPPAs in any year over the 20-year term of the LTPPAs than the energy price for that year in the 2010 forward energy price curve.<sup>7</sup> The retail customers are not harmed by being required to pay for the energy price hedge component of the LTPPA associated with curtailed RECs, since the customers receive value in return, *i.e.*, the protection of the hedge. If, during the 20-year terms of the LTPPAs, the current Day-Ahead LMPs from time to time exceed the current year energy price contained in the IPA's 2010 forward energy price curve, the eligible retail customers' energy costs under the LTPPAs would be capped at the latter price, thereby benefitting and protecting the eligible retail customers. In such an event, under the Renewables Suppliers' proposal, the LTPPA suppliers would pay the utilities, for the energy associated with curtailed RECs, the difference between the Day-Ahead LMPs and the current year energy price contained in the IPA's 2010 forward energy price curve, and these payments would be credited to the eligible retail customers. Therefore, the Renewables Suppliers' proposal is balanced, symmetrical, equitable, and fair to retail customers.

2. The Order states (at p. 179) that "The RS suggests the Commission should unilaterally change the terms of the contract to favor one party over the other party to the contract." This statement is erroneous in several respects. First, the Renewables Suppliers did

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<sup>7</sup> Stated somewhat differently, the utility's eligible retail customers are protected from having to pay more for RECs plus the associated energy than the LTPPA Contract Price (which is comprised of the imputed REC price and the energy price in the 2010 forward energy curve), over the term of the LTPPA.

not suggest that the Commission should “change the terms of the contract” (the LTPPAs) in their primary proposal (or in their alternative proposal for that matter).

Second, adopting the Renewables Suppliers’ primary proposal does not require the Commission to “change the terms of the contract.” (Nor does the Renewables Suppliers’ proposal require the Commission to “modify the LTPPA contracts from the manner in which they were intentionally drafted to protect eligible retail customers” (Order at 180).) The Renewables Suppliers’ proposal is consistent with and permitted by the terms of the LTPPAs and does not require any change to the terms of the LTPPAs. The terms of the LTPPAs allow for the Commission to determine the manner in which a curtailment under the LTPPAs shall be implemented. (See the discussion of this point in the Renewables Suppliers’ Brief on Exceptions at pages 2-4, and in the Reply of the Renewables Suppliers to Responses to the Renewables Suppliers’ Objections to the Illinois Power Agency’s 2014 Procurement Plan at pages 3-8, both of which are incorporated herein by reference.) As the Renewables Suppliers stated at page 3 of their Brief on Exceptions:

Under [the] 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.

Therefore, the definition of the term “Product” in the LTPPAs with ComEd does not control the resolution of this issue.

Third, while the Order stated that the Renewables Suppliers’ proposal would “favor one party” (the Renewables Suppliers) “over the other party to the contract” (the electric utility), the

Renewables Suppliers' proposal would not shift any costs to the utilities. Further, adoption of the Renewables Suppliers' proposal would not require the utilities' customers to pay for any additional costs that they are not already paying for under the terms of the LTPPAs and the utilities' tariffs. To the contrary, the method for implementing curtailments that has been employed to date requires the LTPPA suppliers to absorb revenue losses that they should not have to absorb.<sup>8</sup>

The Renewables Suppliers request rehearing to present evidence and further argument explaining these errors in the Order's conclusion.

### **Renewables Suppliers' Alternative Proposal**

3. In declining to accept the Renewables Suppliers' alternative proposal, the Order stated: "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 for by ComEd's and AIC's eligible retail customers." Order at 181. This statement is incorrect and erroneous. Curtailed RECs are purchased by the utilities using their accumulated hourly ACP funds and by the IPA using accumulated RERF monies. The costs incurred to purchase the curtailed RECs are not charged currently to ComEd's and AIC's eligible retail customers through the utilities' tariffs, nor are these expenditures tracked and recovered through future charges to customers. The amounts of hourly ACP funds accumulated by the utilities are determined independently of the amounts or pricing of any purchases of curtailed RECs by the utilities. The monies in the IPA RERF are accumulated through ACPs made by ARES in respect of their kwh deliveries to the ARES' customers, who by definition are not eligible retail customers of the utilities.<sup>9</sup>

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<sup>8</sup> However, under both the Renewables Suppliers' primary proposal and their secondary proposal, compliance with the RPS rate caps is maintained, and the utility's eligible retail customers are not required to pay more for renewable energy resources than the capped amount specified by the IPA Act.

<sup>9</sup> The Renewables Suppliers recognize that the utilities' accumulated hourly ACP funds and the IPA's RERF are finite balances of funds at a point in time, and in a given year may be insufficient to purchase all curtailed RECs.

4. With respect to the statement in the Order that “[s]hould the RS provide the Commission with sufficient evidence to prove this proposal would not harm utility customers and would be in the public interest, the Commission may be inclined to revisit the issue,” the Renewables Suppliers’ alternative proposal would not harm utility customers for the reasons stated in paragraph 3 above, *i.e.*, the costs incurred by the electric utilities and by the IPA to purchase curtailed RECs are not charged to or recovered from utility customers.

5. Additionally, because the Renewables Suppliers’ alternative proposal will enable them to receive the revenues they reasonably anticipated receiving under the LTPPAs and prevent them from experiencing the revenue shortfalls they are experiencing under the current method of implementing the curtailments, the alternative proposal is in the public interest for the reasons stated in paragraphs 1.a and 1.b above.

**Additional Grounds for Rehearing and Reconsideration**

6. The Commission’s decision in §IV.D.7 of the Order rejecting both the Renewables Suppliers’ primary proposal and the Renewables Suppliers’ alternative proposal, and requiring or allowing that the curtailments of the LTPPAs and the purchases of curtailed RECs be implemented in the same way for the 2014-2015 procurement year as for the 2013-2014 procurement year, is contrary to and not supported by the evidence, is contrary to law, and is arbitrary, capricious and unreasonable. The evidence showed that either the Renewables Suppliers’ primary proposal or the Renewables Suppliers’ alternative proposal should be adopted. The Commission’s statement at page 180 of the Order that “the record in this proceeding supports the same conclusion” (as purportedly reached in Docket 12-0544), namely, that “the curtailment of LTPPAs should include both energy and RECs,” is erroneous. Moreover, the Commission is not bound by any decision it may have reached on this point in Docket 12-0544. The Commission is also not bound by its decision in Docket 09-0373 as to the pricing for curtailed RECs. In any event, the record in this docket provides ample basis for

reaching different decisions on these points than in Docket 12-0544 and Docket 09-0373, respectively.

7. Further, the Commission's decision in §IV.D.7 of the Order is contrary to law because it results in the Renewables Suppliers (and the other suppliers under the LTPPAs) being deprived of more revenues under the LTPPAs than is necessary to achieve compliance with the RPS rate cap requirements of §1-75(c)(2) of the IPA Act.

**Submission of Evidence on Rehearing**

8. As part of this Application for Rehearing and Reconsideration, and incorporated herein, the Renewables Suppliers are submitting the following evidence that is being filed contemporaneously and as a part of this Application for Rehearing and Reconsideration.

Attachment 1: Renewables Suppliers Exhibits 1.0 and 1.1, Direct Testimony on Rehearing of Craig A. Gordon and accompanying exhibit.

Attachment 2: Renewables Suppliers Exhibit 2.0, Direct Testimony on Rehearing of John DiDonato.

Attachment 3: Renewables Suppliers Exhibits 3.0, 3.1 and 3.2, Direct Testimony on Rehearing of Eric Thumma and accompanying exhibits.

Attachment 4: Renewables Suppliers Exhibit 4.0, Direct Testimony on Rehearing of William A. Whitlock.

Attachment 5: Renewables Suppliers Exhibits 5.0 and 5.1, Direct Testimony on Rehearing of John J. Reed and accompanying exhibit.

The Renewables Suppliers request rehearing for the purpose of submitting the evidence listed above, and this evidence could not have been presented during the original proceedings in this docket, for the following reasons:

a. As noted earlier, in its conclusion on the Renewables Suppliers' proposals in §IV.D.7 of the Order, the Order stated: "Should the RS provide the Commission with sufficient evidence to prove this proposal would not harm utility customers and would be in the public interest, the Commission may be inclined to revisit the issue." (Order at 181; emphasis added.) The Commission's Order, as quoted above, expressly calls for the

Renewables Suppliers to provide “evidence” to support their proposals. The evidence submitted with this Application for Rehearing and Reconsideration is being submitted in response to the above-quoted statement from the Commission’s Order.

b. The procedural schedule and format for the Commission proceeding to review the IPA’s proposed Procurement Plan pursuant to 220 ILCS 5/16-111.5(d)(3) does not provide, or allow sufficient time, for the submission of evidence or for an evidentiary hearing. Further, in the original proceedings in this docket, the Chief Administrative Law Judge ruled, pursuant to 220 ILCS 5/16-111.5(d)(3), that no hearing was determined to be necessary; therefore, no opportunity was provided in the original proceedings to present testimony.<sup>10</sup>

WHEREFORE, for the reasons set forth herein, the Renewables Suppliers respectfully request that the Commission grant rehearing and reconsideration with respect to its conclusions set forth in §IV.D.7 of its Order in this proceeding.

Respectfully submitted,

RENEWABLES SUPPLIERS

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<sup>10</sup> Notice of Administrative Law Judge’s Ruling dated October 9, 2013.

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VERIFICATION

Craig A. Gordon, on oath, states that he is the Vice President of Sales and Marketing for Invenergy LLC, one of the Renewables Suppliers; that he is authorized to make this verification on behalf of the Renewables Suppliers; that he has read the foregoing Application for Rehearing and Reconsideration of the Renewables Suppliers and is familiar with the matters set forth therein; and that the matters set forth in the Application for Rehearing and Reconsideration of the Renewables Suppliers are true and correct to the best of his knowledge, information and belief.

  
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Craig A. Gordon

Subscribed and sworn to before me  
this 20<sup>th</sup> day of January, 2014.

  
\_\_\_\_\_  
Notary Public



## CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused the Application for Rehearing and Reconsideration of the Renewables Suppliers in ICC Docket 13-0546 to be served on each of the persons on the Service List by e-mail on January 21, 2014.

/s/ Owen E. MacBride  
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