STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	:	
	:	**Docket No. 13-0546**
Petition for Approval of the 220 ILCS	:	**On Rehearing**
5/16-111.5(d) Procurement Plan	:	

STAFF OF THE ILLINOIS COMMERCE COMMISSION

INITIAL BRIEF ON REHEARING

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April 25, 2014

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	:	
	:	**Docket No. 12-0544**
Petition for Approval of the 220 ILCS 5/16-111.5(d) Procurement Plan	:	**On Rehearing**
	:	

STAFF OF THE ILLINOIS COMMERCE COMMISSION
INITIAL BRIEF ON REHEARING

The Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, and pursuant to Section 200.800 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Initial Brief on Rehearing in the above-captioned matter.

I. BACKGROUND

On September 30, 2013, the Illinois Power Agency ("IPA") filed its Procurement Plan for the five year procurement planning period from June 2014 through May 2019 with the Illinois Commerce Commission ("Commission") thereby initiating this docket.

On or about October 7, 2013 pursuant to Section 16-111.5(d)(3) of the Public Utilities Act ("PUA"), Staff and the following parties served on each other and filed responses and/or objections to the Plan: the Illinois Competitive Energy Association ("ICEA"), Wind on the Wires ("WOW"), the People of the State of Illinois by and through Illinois Attorney General Lisa Madigan ("AG"), Commonwealth Edison Company ("ComEd"), Ameren Illinois Company ("Ameren Illinois," "Ameren," or "AIC"), the Retail

Energy Supply Association ("RESA"), the Renewables Suppliers ("RS"), and Exelon Generation Company ("Exelon" or "ExGen"). The Illinois Department of Commerce and Economic Opportunity ("DCEO") served objections to the Plan on Staff and some but not all of the parties on October 8, 2013. The objections were subsequently posted to e-Docket on October 21, 2013.

On October 9, 2013, the Chief Administrative Law Judge of the Commission provided notice that, "pursuant to Section 16-111.5(d)(3) of the Public Utilities Act, no hearing in the above-referenced matter is determined to be necessary." The ALJ's ruling provides for the filing of: verified responses to objections and verified replies to responses, due October 21, 2013 and October 31, 2013, respectively. (October 9, 2013 ALJ Ruling.)

In addition to Staff, the following parties submitted Responses to Objections ("Responses") to the Plan: IPA, ComEd, Ameren, AG, WOW, RESA, ICEA, Exelon, and CUB. DCEO served its Response to Staff and the parties on October 29, 2013.

On October 31, 2013, in addition to Staff the following filed a Reply to the Responses to Objections ("Replies"): IPA, ComEd, Ameren, RS, WOW, RESA, ICEA, ExGen, CUB and the National Resources Defense Council ("NRDC").

On December 18, 2013, the Commission issued a Final Order. On January 21, 2014, RS filed an Application for Rehearing and Reconsideration ("Application"). RS also filed the Direct Testimony of Craig A. Gordon, John Didonato, Eric Thumma, William A. Whitlock, and John J. Reed with its Application. RS sought rehearing and reconsideration of the Commission Analysis and Conclusions on 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").

RS Application at 1.

The Commission granted RS' Application on February 5, 2014. (Notice, February 6, 2014, 1.)[1] At the Commission Bench Session, Chairman Scott stated:

> In the final Order, the Commission expressly stated that if the Renewable Suppliers were to provide sufficient evidence to prove that the proposals would be in the public interest, we would be inclined to revisit the issue. I feel that the testimony provided by the Renewable Suppliers has the potential to provide much needed clarification on the ramifications of implementing either of the group's proposal concerning Long Term Power Purchase Agreements. Additionally, I find merit in the argument that there was not adequate opportunity for submission of this evidence in the original proceedings, which supports the need for rehearing at this time. (Transcript, Feb. 5, 2014, 34.)

At a Status Hearing, the ALJ set a schedule for Direct and Rebuttal Testimony on Rehearing. On March 19, 2014, Staff filed the Direct Testimony on Rehearing of Richard J. Zuraski. Ameren, ComEd and the IPA also filed Direct Testimony on Rehearing. On April 2, 2014, RS filed Rebuttal Testimony on Rehearing. On April 10, 2014, an Evidentiary Hearing was conducted and several parties entered joint cross exhibits in lieu of cross-examination. Staff's Initial Brief on Rehearing follows.

II. ARGUMENT

The Renewables Suppliers present two mutually exclusive proposals to insulate themselves from any revenue losses they would incur due to invocation of the curtailment

[1] The Notice states that the Commission granted the RS Application on December 4, 2013, yet it is assumed that the correct date is February 5, 2014.

clauses of the LTPPAs: a “primary” proposal and a “secondary” proposal. These proposals differ from the two-step procedure outlined in the approved IPA plan that includes: (1) curtailing quantities of both the energy swap portion and the REC portion of the LTPPAs; and (2) repurchasing unbundled RECs with funds already recovered from the utilities’ hourly price customer through application of Alternative Compliance Payment (“ACP”) rates. (Staff Ex. 1.0 C, 3-4.) Staff witness Richard J. Zuraski noted that to the extent the Renewables Suppliers’ proposals differ from the approved procedure, they require the utilities to incur additional costs equal to the revenue losses otherwise anticipated by the suppliers. Mr. Zuraski stated that as the Commission already found:

> In this instance, the Commission concludes such a change is not in the public interest and will not be adopted.
>
> (Docket No. 13-0546, Order at 180, in reference to the Renewables Suppliers’ primary proposal.)
>
> 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.
>
> (*Id*., p. 181.)

(ICC Staff Ex. 1.0 C, 3-4.)

Staff witness Zuraski testified that there is also a possibility that the change in supplier revenues under the approved procedure is positive rather than negative. This means that there is also a possibility that the change in utility expenditures under the approved procedure is negative rather than positive. However, Staff expects that for the 2014 through 2015 contract period, the Renewables Suppliers’ proposals, if approved, would result in the utilities incurring additional costs. The existing tariffs would enable ComEd and Ameren to recover such additional costs from eligible retail customers.

Therefore, Staff recommends rejecting the Renewables Suppliers' proposals in their current form. (Staff Ex. 1.0 C, 4.)

Nevertheless, if the Commission approves the Renewables Suppliers' primary proposal, then Staff recommends that any additional above-market priced expenditures for unbundled energy be paid for with ACP funds already collected from hourly-priced customers (rather than by increasing the rates of eligible retail customers). Similarly, if the Commission approves the Renewables Suppliers' secondary (alternative) proposal, then Staff recommends that any REC costs incurred by the utilities in excess of the budgeted amount be paid for with ACP funds already collected from hourly-priced customers. In either case, Staff recommends that the additional expenditures be limited by the amount of such ACP funds that have already been collected and are available. This will ensure that the new contracts with the Renewables Suppliers will not cause the statutorily-defined renewable energy price cap to be exceeded. (*Id.*, pp. 4-5.)

RS witness Gordon claims that in 2010 when the RFP event for the LTPPAs was held by the IPA, he did not anticipate a "serious risk" that the LTPPAs could need to be curtailed due to the RPS price caps being exceeded. (Renewables Suppliers Ex. 1.0 at 10, lines 227-242.) Mr. Zuraski testified that this risk miscalculation is not a valid reason to insulate RS or any of the suppliers from that risk. (Staff Ex. 1.0 C, 5.) First, Renewables Suppliers seeking to do business with Illinois utilities knew or should have known that the RPS price caps would be exceeded if significant retail load migrated away from the utilities. They knew or should have known that Illinois was a State committed to fostering retail competition. In its annual report, dated June 2010, the ICC's Office of Retail Market Development was reporting about implementing new legislation "designed to remove certain barriers to competition for residential and small commercial customers in Illinois," such as P.A. 95-0700, which required ComEd and Ameren to begin offering utility consolidated billing ("UCB"), the purchase of receivables ("POR") and the purchase of two billing cycles of uncollectible receivables ("POU"). They knew or should have known that the State had recently enacted a municipal aggregation law (P.A. 96-0176, effective 1/1/2010) that made it easy for ARES to compete for and obtain large quantities of residential customers. They knew or should have known that the utilities were saddled with long-term fixed-quantity energy contracts with fixed prices well-above the current market, thus providing a golden window of opportunity for ARES to offer significant savings to retail customers. Finally, they were told in no uncertain terms that the winning bidders for the LTPPAs risked being curtailed due to the RPS price caps being exceeded. (Staff Ex. 1.0 C, 5.)

Second, even if the shift of retail load away from the utilities and the resulting drop in the utilities' RPS budgets were entirely unforeseeable by Renewables Suppliers, unforeseeable risk is one of the things suppliers voluntarily accept when they participate in the IPA's competitive procurement events. In the face of uncertainty, it is up to bidders to adjust their bids by a suitable risk premium. (*Id.*, p. 6.)

Third, even if the Renewables Suppliers underestimated the risks involved with the LTPPA (perhaps due to underestimating the dynamic nature of the Illinois retail market) or were just willing to throw caution to the wind, those are not valid reasons to punish ratepayers by requiring them to spend more than the caps allow on renewable energy. *Id.*

Mr. Gordon states:

> [O]ur concern is that while curtailment of contracted RECs, at the imputed REC prices in the LTPPAs, is sufficient to prevent the RPS rate caps from being exceeded, the curtailments are being implemented by curtailing both contracted

> RECs and the associated contracted energy under the LTPPAs. Therefore, LTPPA Suppliers are being deprived of revenues under the LTPPAs in an amount greater than the amount needed to prevent the RPS rate caps from being exceeded.

(Renewables Suppliers Ex. 1.0 at 15, lines 331-341.)

Mr. Zuraski disagrees. Under the Renewables Suppliers' proposal, even though the unbundled energy would not necessarily include its associated RECs, if the contract price is above average day-ahead LMPs, ratepayers will still be spending more than they otherwise need to spend in order to acquire energy. In other words, ratepayers would still be buying renewable energy resources at a price that exceeds market prices, to an extent that will cause their rates to exceed the statutorily-defined price cap.

Mr. Gordon also testifies that the LTPPAs provide an energy price hedge for eligible retail customers. (*Id*. at 16.) Staff agrees, however, it is not a particularly good energy price hedge, at least not to date. In the 2012-2013 contract period, average day-ahead LMPs were significantly below both the LTPPA contract prices and the procurement administrator's 2010 forward price for the same 2012-2013 period. For the current 2013-2014 contract period, it appears that average LMPs may not be significantly below (and could even be above) the procurement administrator's forward price. However, it appears from current futures prices that market participants expect LMPs to fall below the procurement administrator's 2010 forward price again in the 2014-2015 and 2015-2016 contract periods. (Staff Ex. 1.0 C, 11.)

Nevertheless, a contract is a contract, and the utilities are contractually obligated to pay these above-market prices for the energy provided under the LTPPAs, to the extent required by the contracts. Of course, the IPA procurement administrator presciently insisted on including in these contracts a circuit breaker, tripped if and when the LTPPA purchases cause the renewable energy budgets to be exceeded. That is, the contracts provide for a partial curtailment of the quantities purchased to insure that retail rates are kept at or below the statutorily-defined price caps. That was part of the original deal, and the Commission should assume as a matter of procurement policy that any risk premiums associated with the curtail clause were included in the suppliers' bids. Authorizing ***any*** kind of repurchase of curtailed quantities from these suppliers can and should be viewed as completely optional. The Commission need not accept new contract terms that are not in the best interest of ratepayers. For instance, the IPA and the Commission could instead use the ACP revenues from hourly price customers to buy RECs through a completely new RFP, with new bids at current market prices and capped at a current price benchmark, if they determined that it would better serve the public interest. (*Id.,* at 12.)

Mr. DiDonato testifies, as Vice President for Wind Development for NextEra, that Illinois does not meet his criteria as a good site for new wind generation development because: "It has become apparent in just a few short years that the benefit of the bargain will not be realized in Illinois now or for the foreseeable future, given the unexpected level of curtailments of the LTPPAs." (Renewables Suppliers Ex. 2.0 at 4.) He concludes his testimony by saying that his company "intends to pursue new renewable energy development in other states in the United States, but not in Illinois so long as our company is unable to realize the benefit of the bargain under long-term agreements." (*Id*. at 5.) While it is unclear exactly what Mr. DiDonato means by "unable to realize the benefit of the bargain, Staff does understand his cautiousness about making investments in Illinois, if the profitability of those investments were to rest entirely (or almost entirely) on contracts such as the LTPPAs, which enable the utilities to cut back on purchases due to the Illinois rate cap. (Staff Ex. 1.0 C, 12.) However, the curtailment clauses of the LTPPAs are just one of the mechanisms with which the Commission has attempted to juggle the array of competing objectives set forth in the governing statute. As the Commission more eloquently explained the issue:

> 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.

(13-0546, Order at 181.)

It should also be recalled that neither of the two Illinois RPSs requires that renewable energy resources be located within Illinois. The RPS applicable to utilities expresses a ***preference*** that resources be located within Illinois ***or*** the six states that adjoin Illinois. The RPS applicable to ARES only requires that the resource be located within the footprint of PJM and the portion of MISO that lies within the United States. Together that footprint encompasses all or parts of 27 different States and the District of Columbia. Additionally, Mr. Whitlock states that the company he works for "has had in excess of 500 MWs of projects in Illinois that are near construction-ready, with transmission agreements signed, many years of meteorological data compiled to measure the wind speeds, and local permits secured," but that with increasing concerns relating to the current Illinois RPS procurement situation that does not offer any prospects for additional long-term contracting in the foreseeable future, and with the LTPPAs now being curtailed, Illinois has become a much less attractive market. (Renewables Suppliers Ex. 4.0, 4.) "As a result, we have not proceeded to construction on any of these projects, and we currently have no projects under construction in Illinois." (*Id*.) Mr. Thumma testifies that the Renewables Suppliers should be "made whole" under the

LTPPAs (suffer no revenue losses from curtailments) because Illinois has set a 25% renewable energy goal by 2025, and potential investors will only initiate new renewable energy projects sufficient to reach that goal "if they believe they can recover their capital costs and earn a reasonable, risk-weighted rate of return." (Renewables Suppliers Ex. 3.0, 10.)

Staff reiterates what was said about Mr. DiDonato's opinion of Illinois as a site for new wind farm investment. The plain and simple fact is that the Illinois statute contains many competing goals and requirements, and building wind farms within Illinois does not work to the exclusion of other competing goals and requirements. It must coexist within a bifurcated two-RPS system (which is subject to a renewable energy budgetary cap tied to ratepayer usage) and alongside a dynamic and competitive retail electricity market. Also, neither of the two Illinois RPSs requires that renewable energy resources be located within Illinois. (Staff Ex. 1.0 C, 13.)

Additionally, there are other reasons why a company might rethink plans to build new generating facilities at any given location. First, a company might look at energy prices. All else equal, low electricity prices would discourage new investment in generating equipment (including wind farms). Notably, Illinois has low wholesale energy prices relative to other States. Low fossil fuel prices would discourage new investment in non-fossil fueled renewable energy facilities (like wind farms). Low capacity prices (e.g., payments to generators by RTOs for making generating capacity available) would also discourage new investment in generating equipment (including wind farms). Reacting to such incentives is part of the normal operation of an efficient market. Mr. Thumma identifies three primary revenue streams for wind energy projects: (1) federal tax incentives in the form of a production tax credit and accelerated depreciation; (2)

wholesale energy, sold at a market determined price, and; (3) renewable energy certificates ("REC"). (Renewables Suppliers Ex. 3.0 at 4.) He also mentions that a production tax credit of $23 per MWH has expired except for projects that have already begun construction. (*Id*.) Mr. Thumma omits additional revenue streams, however. First, wind farms can also earn revenue by providing "capacity services" to PJM or MISO. Second, the accelerated depreciation allowed for wind farm investments is considerably more generous than the accelerated depreciation allowed for fossil fuel generating plant investments. To investors, these deferred taxes have a considerable net present value that can rival that of a $23 per MWH production tax credit. While deferred taxes are not a revenue source, they can be thought of as zero percent loans from the government.

Mr. Thumma states, "It is my understanding that ARES are primarily buying RECs on the spot market or for very short terms in order to fulfill their RPS obligations." (*Id*. at 8.) Notwithstanding this observation, Mr. Thumma testifies that long-term contracts provide two potential benefits for electricity consumers: lower costs and lower risk. The retail electricity market in Illinois appears very competitive and it is expected that ARES seek to maximize profits. If Mr. Thumma is correct that "ARES are primarily buying RECs on the spot market or for very short terms in order to fulfill their RPS obligations," then there is probably a good reason for it. One likely possibility is that ARES have decided it is less expensive and/or less risky to purchase RECs on the spot market or for very short terms than to enter into long-term contracts for RECs or RECs bundled with energy.

With respect to cost, so far, the experience of ComEd and Ameren has been that 1-year contracts for unbundled RECs have been less expensive than the LTPPAs. Of course, there are still another 18 years left under those contracts, so we cannot directly compare the ultimate cost of the LTPPAs over 20 years to 20 years of contemporaneous

1-year unbundled REC contracts. With respect to risk, generally long-term contracts reduce exposure to unexpected and adverse changes in market prices. In this instance, this refers to changes in both the price of RECs and the price of electricity. However, an excess of long-term contracts with fixed quantities can increase risk, if the utility loses enough load to ARES.

Mr. Thumma (*Id.* at 8-10), Mr. Whitlock (Renewables Suppliers Ex. 4.0 at 4), and Mr. DiDonato (Renewables Suppliers Ex. 2.0 at 5.) testify that both the Renewables Suppliers' primary and secondary proposals make the suppliers "whole." In other words, they would earn the same revenue as they would if there were no curtailments. This implies that if the revenues to the Renewables Suppliers do not fall (i.e., they are as they would be with no curtailments), then the costs to the utilities do not fall. Therefore, unless some of these costs are recovered from someone other than eligible retail customers, the total cost to eligible retail customers will be the same as they would be with no curtailments. Here, it bears remembering that the use of ACP revenues from hourly-customers to buy back curtailed RECs was not proposed until 2012 (well after the 2010 contracts were developed). Thus, in 2010, when the LTPPAs were developed and approved by the Commission, it is reasonable to surmise that the curtailment clause was intended and expected to reduce costs incurred by the utilities and recovered solely from eligible retail customers. The curtailment clause was not developed and approved by the Commission with any intention or expectation that the clause's invocation would leave costs unchanged. In other words, there was no intention or expectation that Renewables Suppliers would be "made whole" at each curtailment. If there was such an intention or expectation, then there would have been no point to have the curtailment clause.

The only way to keep eligible retail customers "whole" is either to reject the Renewables Suppliers' proposals, or to pay for the additional costs from some other source than eligible retail customers' rates. (Staff Ex. 1.0 C, 18.) For instance, assuming the Renewables Suppliers' primary proposal is accepted, any additional above-market priced expenditures for unbundled energy could be paid for with ACP funds already collected from hourly-priced customers. Assuming the Renewables Suppliers' secondary (alternative) proposal is accepted, any REC costs incurred by the utilities in excess of the budgeted amount could be paid for with ACP funds already collected from hourly-priced customers. In either case, Staff recommends that the additional expenditures be limited by the amount of such ACP funds that are available. This would ensure that the new contracts with the Renewables Suppliers will not cause the statutorily-defined renewable energy price cap to be exceeded.

Mr. Reed says that the Renewables Suppliers' proposals "satisfy the 'no harm' standard." Staff disagrees. In reaching this conclusion, Mr. Reed admits that he is relying entirely on the testimony of Mr. Gordon (Renewables Suppliers Ex 1.0), where, purportedly, Mr. Gordon establishes that the proposals "would not result in charges to eligible retail customers of the electric utilities that exceed the statutory RPS rate cap." (Renewables Suppliers Ex 5.0 at 9.) Mr. Reed merely attaches a new label -- the satisfaction of a no harm standard -- to Mr. Gordon's claims. Mr. Reed also says that the Renewables Suppliers' proposals are "in the public interest" because they provide "the greatest benefit to the greatest number of … citizens of Illinois." He enumerates the factors that determine "benefit" in this context as (1) just and reasonable rates, (2) renewable energy development, (3) ensuring that there is no undue discrimination in utility service, (4) economic development, and (5) environmental protection.

(Renewables Suppliers Ex 5.0 at 9.) The RS' proposals are not in the public interest. Mr. Reed has failed to demonstrate that the Renewables Suppliers' proposals maximize these enumerated five benefits, and the proposals are inconsistent with the benefit of just and reasonable rates.

Mr. Reed does not show that the Renewables Suppliers' proposals are consistent with the benefit of renewable energy development. First, Mr. Reed notes that the State's RPS requirements began at 2% of energy usage and grow to 25% of energy usage by 2025, "which," he concludes, "will clearly require extensive development of renewable energy generating facilities to be achieved." (Renewables Suppliers Ex 5.0 at 10.) He then testifies that the State has approximately 3,600 MW of installed wind turbine generating capacity and another 8,000 MW will be needed to meet the Illinois\ renewable energy requirements by 2025. Second, Mr. Reed states:

> Adopting one of the Renewables Suppliers' proposals will help preserve the viability of these types of agreements, the suppliers, and the renewable energy industry in Illinois. Conversely, as described by witnesses DiDonato, Whitlock, and Thumma, if the Renewables Suppliers' request for rehearing and reconsideration is denied and the current approach to curtailment is maintained, it will negatively impact the development of new renewable generation for use in the State and ultimately the State's ability to achieve RPS compliance. As the testimony of the Renewables Suppliers' company witnesses makes clear, future renewable generation development for Illinois' utilities rests on the State establishing and administering a supportive environment for renewable power supply contracting and contract administration. These projects depend on strong, reliable, and predictable revenue streams from wholesale power supply offtake agreements in order to be able to be developed, financed, and kept in production. If either the development community or the financial community loses confidence in the State's willingness or ability to provide a supportive environment for renewable generation development, development will move elsewhere, and many of the State's policy objectives will not be as easily or fully achieved.

(*Id*. at 11-12.)

To paraphrase Mr. Reed: to ensure Illinois RPS goals are satisfied in the future, the Commission now must assure companies it is profitable to enter into long-term contracts with Illinois utilities, even if that requires the Commission to grant concessions to the Renewables Suppliers; the LTPPAs need to be profitable at any cost, even if that means the Commission must supplement the Renewables Suppliers' revenue streams with "make whole" addendums.

It is Staff's position that the Commission need not shoulder such burdens. (Staff Ex. 1.0 C, 20.) What Mr. Reed may not appreciate is that Illinois, starting with the Electric Service Customer Choice and Rate Relief Law of 1997 (Public Act 95-0481) ("the 1997 Law"), took a bold step away from Commission-directed planning of in-state generation investments by utilities and toward greater reliance on competitive forces operating within regional markets. This sea change is exemplified by (a) the 1997 Law's repeal of Section 8-402 of the Act ("Comprehensive utility energy plan"); (b) its addition of Section 16-111(g), which includes provisions that made it easy for utilities to retire, sell, assign, lease or otherwise transfer generating assets to affiliated or unaffiliated entities; (c) its addition of Section 16-126, which requires that each utility join an independent system operator (or, as later amended, a regional transmission organization); and (d) its legislative findings, in Section 16-101A of the Act, which cites to "competitive forces" and "increasing competition." Similarly, the Illinois Power Agency Act (Public Act 95-0481) ("IPA Act") charged the IPA and the Commission, not with entering into a new "regulatory compact" with a new class of generation-only public utilities, but simply with assuring that the utilities act upon the receipt of arms-length competitive bids.

Assuming that Mr. Reed's capacity figures are reasonably accurate, the wind-generated electricity associated with all that needed capacity amounts to 18.75% of the total energy demand of ComEd and Ameren customers (that is, 25% of at most 75%, which is the wind proportion requirement under the RPS for utilities). That leaves at least

75% of energy demand that must be satisfied by all ***other*** energy suppliers, and yet Illinois government has no explicit plan to insure that enough capacity will exist in 2025 to generate that larger fraction. The IPA is not proposing and the Commission is not entertaining supplementing the income of any other generating companies within PJM and MISO or just within Illinois, even though some of those companies could be experiencing lower revenues due to lower-than previously expected spot prices for energy. Thus, simply identifying for the Commission the number of MWs of wind-powered generating capacity that may (or may not) be required by 2025 does not establish that the Renewables Suppliers' proposals are necessary or desirable in order to achieve the State's RPS goals. In the context of a power generation industry increasingly devoid of regulatory compacts because States like Illinois have legislated greater reliance on competitive forces, the Commission need not ensure the profitability of suppliers in either the short run or the long run. (Staff Ex. 1.0 C, 22.)

Mr. Reed does not show that the Renewables Suppliers' proposals are consistent with the benefit of "ensuring that there is no undue discrimination in utility service." After including it in his list of factors that are relevant to assessing public benefits, he does not mention the concept of undue discrimination in utility service, let alone tie it to the Renewables Suppliers' proposals.

Mr. Zuraski stated that the Renewables Suppliers' proposals are also inconsistent with the benefit of economic development. (*Id.,* 23.) He explained that Mr. Reed essentially makes the same argument that he makes in the context of the benefit of renewable energy development, already addressed above. In addition, Mr. Reed testifies that renewable energy projects are labor-intensive and rely on many components that are manufactured in the U.S. He also testifies that more jobs per unit of electricity are created through renewable energy-fueled electricity generation than through fossil-fueled electricity generation. He also testifies that renewable energy development primarily takes place in rural areas where it can stimulate economic activity, create jobs and steady property tax revenues, and support vital services. In response to Mr. Reed's testimony about labor intensity and his reference to jobs per unit of electricity, if policy-makers want to focus on labor intensity and attempt to maximize the number of jobs per unit of electricity, then wind-powered generation may be the wrong technology to focus upon. Wei, Patadia, and Kammen summarize 15 studies and their findings in terms of job-years per Gigawatt-hour. ("Putting renewable and energy efficiency to work: How many jobs can the clean energy industry generate in the US?" *Energy Policy* 38 (2010) 919–931.) Five of the reviewed studies included wind-powered generation, among which the low and the high estimates were 0.10 and 0.26 job-years per Gigawatt-hour, and the average was 0.17. In comparison, the three studies that included estimates of solar photovoltaic power jobs revealed a low of 0.23, a high of 1.42, and an average of 0.87 job-years per Gigawatt-hour. The two estimates of jobs associated with landfill gas-fueled generation are also higher than the estimates of jobs associated with wind-powered generation: 0.32 and 1.12, averaging 0.72 job-years per Gigawatt-hour. Therefore, if a criteria for technology adoption were job-years per Gigawatt-hour, wind-power generation would not be the most preferred technology. Furthermore, all else equal, job-years per Gigawatt is an indicator of inefficiency. As a matter of policy, the Commission should not provide preferential treatment on the basis of technological inefficiency (i.e., the Commission should not, all else equal, favor a generation technology because it consumes more resources per Gigawatt-hour than other competiting technologies).

ComEd witness Zahakaylo focused on the RS' primary proposal, testifying that it is not in the public interest and would be harmful to customers. (ComEd Ex. 1.0, 16.) He recommended that the Commission reject the RS' proposal. *Id*. He indicated that contract terms were put into place specifically to ensure that ComEd customers would receive certain protections with respect to their supply costs. *Id*. He further opined that, to be fair, additional payments to the RS should be recovered from all customers rather than just ComEd's existing fixed price customers, noting that the additional costs originated not from the actions of the existing fixed price customers, but from the choice of other customers to switch suppliers. *Id*.

Ameren witness McCartney recommended that the Commission reject the RS' primary proposal. (Ameren Ex. 1.0 (RH), 5.) He testified that the RS' proposal would make eligible retail customers responsible for paying what the RS describe as a shortfall of revenues, which would result in higher costs to these same customers. *Id*. However, if the Commission decides to adopt the first proposal, he recommends that the Order be written to make it clear that the Commission's acceptance is associated with this Plan only and is subject to further review by the Commission in future years. *Id*. In addition, because the methodology by which the first proposal would be calculated is not contemplated under the settlement provisions of the LTPPAs, Mr. McCartney says it is important that the Commission approve a methodology for settlement in its Order. *Id*. While Mr. Gordon proposed a methodology in his testimony on page 14, Ameren is concerned that impacted parties could have differing interpretations unless a specific methodology is approved. *Id*., 5-6. In summary, Ameren recommends the Commission reject the first proposal, but if the Commission adopts the proposal, the Company recommends it be implemented for this Plan only and an approved settlement methodology is detailed in the Order. *Id*., 6.

IPA witness Star made three recommendations to the Commission. First, arguing that it is not in the public interest, he testified that the Commission should reject the RS' request to not curtail the energy component of the Long-Term Power Purchase Agreements ("LTPPA") procured by the IPA in December, 2010. (IPA Ex. 1.0R, 2.) Second, he recommended that the Commission consider the RS's alternative proposal of utilizing a floating REC price for the purchase of curtailed RECs, but that any additional payments to the RS should only come from the hourly ACP funds held by the utilities, and that a system should be developed to ensure proper administration of any purchases. *Id*. Third, Mr. Star recommended that, in general, the Commission should remain open to ideas for incentivizing renewable energy development. *Id*.

The IPA, Ameren, ComEd, and Staff all agree that the RS' primary proposal should be rejected. To the extent to which the issue was addressed, they also all agree that, if either of the RS proposals is accepted, any additional utility payments to the RS should be limited to the funds already collected from the utilities' hourly customers through application of ACP rates.

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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April 25, 2014