

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 16-111.5(d)(4) of the)
Public Utilities Act.)

RENEWABLES SUPPLIERS'

INITIAL BRIEF ON REHEARING

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TABLE OF CONTENTS

I.	Introduction.....	1
II.	The Renewables Suppliers’ Proposals.....	4
III.	The Renewables Suppliers’ Proposals Will Not Harm Utility Customers and Are in the Public Interest.....	7
A.	Renewables Suppliers’ Primary Proposal.....	8
1.	The Primary Proposal Will Not Harm Utility Customers.....	8
2.	The Primary Proposal is in the Public Interest.....	12
3.	Settlement Mechanics for the Primary Proposal.....	20
B.	Renewables Suppliers’ Secondary Proposal.....	21
1.	The Secondary Proposal Will Not Harm Utility Customers.....	21
2.	The Secondary Proposal is in the Public Interest.....	22
3.	Settlement Mechanics for the Secondary Proposal.....	24
IV.	Issues Raised by Other Parties’ Witnesses Concerning the Renewables Suppliers’ Proposals.....	24
A.	Concern that Curtailments Due to Customer Shifting Were Forseeable.....	25
B.	Concern that Renewables Suppliers Are Attempting to Change the Contract Terms, and Impacts on Future Procurements.....	31
V.	Conclusion.....	34

I. Introduction

The Renewables Suppliers are owners of renewable resources generation facilities who entered into long-term renewable resources power purchase agreements (“LTPPAs”) with Commonwealth Edison (“ComEd”) and/or Ameren Illinois (“AIC”) as the result of a procurement event held by the Illinois Power Agency (“IPA”) in December 2010.¹ In the original proceedings in this docket, the Renewables Suppliers made two proposals relating to the curtailments of purchases of renewable energy credits (“RECs”) and the associated electricity under their LTPPAs that have been implemented to prevent the renewable portfolio standard (“RPS”) rate caps specified in §1-75(c)(2) of the IPA Agency Act from being exceeded.²

The Renewables Suppliers’ primary proposal is that the Commission should direct that, in the event it is determined that a curtailment of purchases is required to avoid exceeding the RPS rate caps, 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 (i) the current year energy price in the 20-year energy price forecast developed by the IPA in connection with the December 2010 procurement event, minus (ii) the current Day-Ahead Hourly Locational Marginal Prices (“DAH-LMPs”) in the load zone applicable to the contract.³ (For purposes of the issues in this case, the DAH-LMP represents the current wholesale market

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 are sometimes referred to herein as the “RS.” “LTPPA suppliers” is used to refer to all suppliers under the LTPPAs.

² 20 ILCS 3855/1-75(c)(2). For the current (June 1, 2013 – May 31, 2014) IPA plan year, contracted purchases are curtailed by 18.64% under the ComEd LTPPAs, but not under the LTPPAs with AIC. For the upcoming (June 1, 2014 – May 31, 2015) plan year that is the subject of this case, the IPA Plan indicated a need for curtailments of both the ComEd and AIC LTPPAs. However, based on ComEd’s and AIC’s load forecast updates filed in this docket on March 28 and April 2, 2014, respectively, it appears that no curtailments of the AIC LTPPAs will be required for the upcoming year, while ComEd will continue to have curtailments.

³ The IPA’s 20-year price forecast developed in connection with the December 2010 procurement event is referred to as the “2010 forward energy curve” or “2010 FEC.”

price of electricity. RS Ex. 1.0 at 5.) The primary proposal preserves the customer protections of the statutory RPS rate caps.

The Renewables Suppliers' secondary, alternative proposal is that curtailed RECs should be purchased by the utilities, using their accumulated balance of funds from assessing the alternative compliance payment ("ACP") rate to their customers served on hourly pricing tariffs (referred to as "hourly ACP funds"), and by the IPA, using funds in the IPA Renewable Energy Resources Fund ("RERF"), at prices equal to the Contract Prices under the LTPPAs less the DAH-LMPs.⁴ The secondary proposal also preserves the customer protections of the rate caps.

In §IV.D.7 of its Order issued December 20, 2013 in this case ("December Order"), the Commission declined to accept either the Renewables Suppliers' primary or secondary proposal. However, the Commission 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." December Order at 181. The Renewables Suppliers filed an Application for Rehearing in which they proffered evidence to show that their proposals would not harm utility customers and are in the public interest, as well as addressing other problematic aspects of the Commission's Conclusion in §IV.D.7 of the December Order. On February 5, 2014, the Commission granted the Renewables Suppliers' Application for Rehearing of the conclusion in §IV.D.7 of the December Order.

Beginning with the 2013-2014 procurement year, the Renewables Suppliers' LTPPAs with ComEd are being curtailed to prevent the RPS rate caps from being exceeded. The curtailments are occurring due to significant customer shifting from ComEd to ARES to an extent not foreseen by either the IPA or the Renewables Suppliers at the time of the procurement

⁴ Section 1-75(c)(5) of the IPA Act requires the electric utilities to assess the ACP rate to their customers served on hourly pricing tariffs, based on the kwh sales to those customers, using the same ACP rates applicable to sales by alternative retail electric suppliers ("ARES") to their customers pursuant to §16-115D of the Public Utilities Act ("PUA"). Section 1-75(c)(5) also provides for the collections to be used to procure renewable energy resources in the following plan year.

event in which the LTPPAs were awarded. RS Ex. 1.0 at 10-11; RS 2.0 at 4; RS Ex. 5.2 at 9. The Renewables Suppliers intervened in this case to submit their proposals because the method used to implement the curtailments in 2013-2014 is depriving them of significant revenue under the LTPPAs, and in particular, deprives them of more revenue than is necessary to prevent the RPS rate caps from being exceeded. This situation has created uncertainty and risks as to the advisability of entering into long-term supply contracts to serve Illinois' RPS requirements. Long-term power purchase agreements provide the lowest-cost and most efficient means to finance development of new renewable generation facilities (RS Ex. 3.0 at 4-8), but the uncertainty caused by the LTPPA curtailments and the manner in which they are implemented has made long-term supply agreements uncertain and unreliable from the perspective of potential suppliers to the Illinois market. RS Ex. 2.0 at 4; RS Ex. 2.1 at 1-3; RS Ex. 4.0 at 3-5; RS Ex. 5.0 Rev. at 6, 20-21. Since the curtailments began, new renewable generation projects are not being constructed or placed in operation in Illinois, existing projects in development have been placed on hold, and major developers are shifting their capital and resources to other states where they can achieve stable long-term revenue streams. RS Ex. 2.0 at 4-5; RS Ex. 2.1 at 1-3; RS Ex. 4.0 at 4-5; RS Ex. 4.1 at 1-2.

The record on rehearing shows that the Renewables Suppliers' primary proposal will not harm utility customers and is in the public interest. Under the primary proposal, the utilities' eligible retail customers will continue to receive the full protection of the statutory RPS rate caps based on the procedures previously developed by the IPA, and approved by the Commission, for determining if the rate caps are exceeded. Charges to customers will be reduced by the amount necessary to prevent the RPS rate caps from being exceeded. The primary proposal is in the public interest because it will restore revenue certainty to the LTPAAs and thus restore certainty to entering into long-term contracts (as noted above, the lowest-cost and most efficient means to finance development of new renewable generation) to provide renewable resources to the Illinois

market. This in turn will support development of new renewable generation facilities in Illinois, as well as in other states, to serve the Illinois renewables market. Construction and operation of renewable generation facilities provides environmental benefits, reduces electricity prices and supports price stability for consumers, and provides significant benefits in terms of economic activity for the State and the localities in which the facilities are constructed.

The record on rehearing also shows that the Renewables Suppliers' secondary proposal will not harm utility customers (in fact, as pointed out by the AIC witness, it would not increase costs to utility customers or to any other customers. Ameren Ex. 1.0 at 7). The secondary proposal maintains the full protection of the RPS rate caps for utility customers and does not require a change to the current curtailment methodology. It also provides for the purchase of curtailed RECs on the same basis as the financial settlement terms of the LTPPAs. Although the secondary proposal would provide a lesser degree of revenue certainty for LTPPA suppliers than would the primary proposal, the record shows the secondary proposal is in the public interest.

II. The Renewables Suppliers' Proposals

The Renewables Suppliers' proposals were described at pages 157-161 and 167-168 of the December Order and are restated below. However, to understand the basis for the proposals, it is important to understand the method proposed by the IPA and approved by the Commission in Docket 09-0373 to determine the imputed prices of RECs contracted for in the LTPPAs and determine whether curtailments of the LTPPAs are needed to avoid exceeding the RPS rate caps.

The terms of the request for proposal ("RFP") for the 2010 IPA procurement event in which the LTPPAs were awarded required bidders to submit a single bundled Contract Price for RECs plus energy for the first year, which would be escalated at 2% per year over the 20-year term of the contract. To determine the imputed prices of RECs included in the bidders' proposed Contract Prices, the IPA, its Procurement Administrator, the Procurement Monitor, and Commission Staff developed a confidential forecast of energy prices for each year of the period

to be covered by the LTPPAs (the 2010 FEC).⁵ The forecasted energy price for a given year was subtracted from the proposed Contract Price to determine the imputed price of RECs to be supplied under an LTPPA. As required by §1-75(c)(1) of the IPA Act and §16-111.5(e)(3) of the PUA, the imputed REC price in a bidder's proposed Contract Price was then compared to confidential "benchmark" market prices for RECs determined by the IPA, the Procurement Administrator and Procurement Monitor, and Staff, to determine if the bid was "cost-effective." 20 ILCS 3855/1-75(c)(1); 220 ILCS 5/16-111.5(e)(3). This process established imputed REC price and energy price components for each LTPPA. Further, all the pricing impact attributable to the renewable aspect of the LTPPA is attributed to the REC component.

The imputed REC prices in the LTPPAs, calculated as described above, are also used by the IPA each year to determine if the RPS rate caps will be exceeded and, therefore, if a reduction in purchases under the LTPPAs is necessary to prevent the RPS rate caps from being exceeded. For each utility, the IPA determines the total dollar amount of RECs contracted for under the utility's LTPPAs, calculated as the sum for all the LTPPAs of the contract quantity of each LTPPA times its imputed REC price. The IPA also determines the maximum expenditure on RECs allowed by the RPS rate caps, calculated as the utility's projected kwh sales to eligible retail customers times the rate cap amount (this total is referred to as the Renewable Resources Budget or "RRB").⁶ If the total dollar amount of RECs contracted for under the LTPPAs exceeds the RRB, then purchases under the LTPPAs for the year must be reduced to the point at which the dollar amount of RECs to be purchased under the LTPPAs is equal to the RRB. To state this in terms of the cents/kwh rate caps, if the total dollar amount of RECs contracted for under the LTPPAs (based on the imputed REC prices), divided by the utility's projected kwh sales to eligible retail customers, exceeds 0.18917 cents/kwh for ComEd or 0.18054 cents/kwh

⁵ For the ComEd procurement, the Procurement Administrator was National Economic Research Associates and the Procurement Monitor was Boston Pacific. RS Ex. 1.0 at 6.

⁶ The RPS rate cap calculation is described in §1-75(c)(2) of the IPA Act; however, the caps amount to 0.18917 cents/kwh for ComEd and 0.18054 cents/kwh for AIC. RS Ex. 1.0 at 10; 2014 IPA Plan at 18.

for AIC, the amount of RECs to be purchased under the utility's LTPPAs must be reduced to the point at which the REC cost per kwh does not exceed the rate cap amount.⁷

As the preceding two paragraphs show, the determination of whether the RPS rate caps are exceeded, and a curtailment of the LTPPAs is needed, is based solely on the imputed REC prices, calculated as the LTPPA Contract Price minus the energy price from the IPA's 2010 FEC. The calculation does not consider the cost of energy contracted for in the LTPPAs. RS Ex. 1.0 at 9-10. However, for the current year, the curtailments of the ComEd LTPPAs were implemented by reducing purchases of both RECs and the associated electricity under each PPA by 18.64%. This implementation deprives the LTPPA suppliers of significant revenues under the contracts, because the prices in the IPA's 2010 FEC have proven to be higher than current wholesale electricity market prices. The LTPPA suppliers are only able to sell the curtailed electricity generated by their facilities into the market at the current wholesale market price. This results in a revenue shortfall under the LTPPAs equal to the energy price in the 2010 FEC less the current wholesale market price.⁸ RS Ex. 1.0 at 13-15; RS Ex. 2.0 at 3; RS Ex. 4.0 at 3.

In Docket 12-0544, the proceeding concerning the 2013 IPA Plan, in which the LTPPA curtailments for 2013-2014 were approved, the Commission directed ComEd to use its accumulated hourly ACP funds to buy curtailed RECs (but not curtailed energy) from the LTPPA suppliers. Order in Docket 12-0544 (December 19, 2012) at 110-111, 114-115. In

⁷ The processes described in the preceding two paragraphs are set forth in Appendix K to the 2010 IPA Plan, which was approved in Docket 09-0373. RS Ex. 1.1 is the text of Appendix K. These processes are also described in the direct testimony on rehearing of Craig Gordon, RS Ex. 1.0 at 6-10.

⁸ If there is no curtailment, transactions under the LTPPAs are settled each month by the utility paying the supplier the difference, for each hour, between the Contract Price and the DAH-LMP, times the quantity generated in the hour (up to the maximum contract quantity). However, if the LMP exceeds the Contract Price, the supplier pays the difference to the utility. RS Ex. 1.0 at 4-6; RS Ex. 3.0 at 9-10; RS Ex. 5.0 Rev. at 4. This financial settlement arrangement avoids the need for the supplier to physically delivery electricity to the utility, because the supplier can sell the electricity generated by its facility to the grid operator at the DAH-LMP and the utility can buy electricity from the grid operator at that price. Although the LTPPAs do not require physical delivery of electricity by the supplier to the utility, the LTPPAs are contracts for RECs plus energy. Moreover, a supplier cannot produce a REC unless its renewable generation facility generates a MWh of electricity. RS Ex. 1.0 at 3, 6.

addition, because ComEd lacked sufficient accumulated hourly ACP funds to purchase all the curtailed RECs, the IPA has voluntarily used monies in the RERF to purchase the remaining curtailed RECs from the LTPPA suppliers. The price at which the IPA has purchased curtailed RECs has also been the imputed REC price for each LTPPA, calculated as described above. RS Ex. 1.0 at 12-13. ComEd and the IPA are expected to purchase curtailed RECs on the same basis during the 2014-2015 plan year. However, despite the purchases of curtailed RECs at the imputed REC price, the curtailment of purchases of both RECs and the associated energy leaves the Renewables Suppliers with a revenue shortfall under their LTPPAs equal to the difference between the 2010 FEC price and the current wholesale energy price.

With this background in mind, the Renewables Suppliers' proposals are as follows:

- The Renewables Suppliers primary proposal is that, if the Commission directs curtailments under the LTPPAs in order to keep within the RPS rate caps, REC purchases under the LTPPAs should be curtailed to the extent necessary to satisfy the RPS rate caps, but the utility should be directed to settle the associated contracted energy under the LTPPAs based on the energy price in the IPA's 2010 FEC less the current DAH-LMPs in the load zone applicable to the LTPPA. The curtailments would be limited to the amount of RECs needed to prevent the RPS price caps from being exceeded. The utility's customers would not be charged for the curtailed RECs. RS Ex. 1.0 at 3-4; RS Ex. 5.0 Rev. at 5; RS Ex. 5.2 at 2, 6-8, 22.
- The Renewables Suppliers' secondary, alternative proposal is that in the event of a curtailment of the LTPPAs to comply with the RPS rate caps, the utility should be directed to purchase curtailed RECs using the utility's accumulated hourly ACP funds, at a price equal to the LTPPA Contract Price less the current DAH-LMPs in the applicable load zone. RS Ex. 1.0 at 4.

III. The Renewables Suppliers' Proposals Will Not Harm Utility Customers and Are in the Public Interest

The following witnesses each submitted direct and rebuttal testimony on rehearing on behalf of the Renewables Suppliers: Craig A. Gordon, Vice President of Sales and Marketing of Invenergy LLC; John DiDonato, Vice President of Wind Development of NextEra Energy Resources, LLC ("NextEra"); Eric Thumma, Director of Policy and Regulatory Affairs for Iberdrola Renewables LLC; William A. Whitlock, Executive Vice President – Eastern Region of EDP Renewables North America LLC ("EDPR"); and John J. Reed, Chairman and Chief

Executive Officer of Concentric Energy Advisors, Inc. The testimony of these witnesses, along with other evidence in the record, shows that the Renewables Suppliers' proposals will not harm utility customers and are in the public interest.

A. Renewables Suppliers' Primary Proposal

1. The Primary Proposal Will Not Harm Utility Customers

Adoption of the Renewables Suppliers' primary proposal will not harm utility customers, because they will continue to receive the protection of the statutory RPS rate caps and will not be charged amounts that would cause the RPS rate caps to be exceeded. Preservation of the protection of the RPS rate caps in §1-75(c)(2) of the IPA Act is the appropriate determinant that utility customers will not be harmed. The primary proposal maintains the protection of the RPS rate caps for the utility's eligible retail customers. RS Ex. 1.2 at 1-2; RS Ex. 3.3 at 6; RS Ex. 5.0 Rev. at 7-9; RS Ex. 5.2 at 2, 5-8, 22. Under the primary proposal, if the IPA determines that the RPS rate caps will be exceeded in a year, purchases of RECs under the LTPPAs will be curtailed to the extent necessary to stay within the rate caps, but (unlike the current curtailment procedure), purchases of energy associated with the curtailed RECs will not be curtailed. The utility will charge its customers for the energy associated with the curtailed RECs, based on the energy price from the IPA's 2010 FEC. This is the same price that customers are charged for the contracted energy under the LTPPAs associated with RECs purchases that are not curtailed.⁹ The utility's eligible retail customers, however, will continue to receive the full protection of the RPS rate caps, through the curtailment of REC purchases under the LTPPAs.

Adoption of the primary proposal will not result in the utility's eligible retail customers being charged amounts for RECs and energy contracted for under the LTPPAs that will cause the

⁹ The utility would be entitled to recover the costs of purchasing the energy associated with the curtailed RECs through its tariff, in accordance with 220 ILCS 5/16-111.5(l) ("An electric utility shall recover its costs incurred under this Section, including, but not limited to, the costs of procuring power and energy demand-response resources under this Section"). RS Ex. 1.0 at 15; RS Ex. 1.2 at 1; Staff Ex. 1.0C at 4; IPA Cross Ex. Ameren-2; IPA Cross Ex. ComEd-2.

RPS rate caps to be exceeded. As described in §II above, the IPA and the Commission determine whether the rate caps will be exceeded based solely on the imputed REC prices under the LTPPAs. Based on the “Appendix K” procedure approved in Docket 09-0373, if the IPA and the Commission determine that the RRB will be exceeded if the full contracted quantity of RECs is purchased, curtailment of the REC component of the LTPPAs is sufficient to bring purchases within the RRB and prevent the RPS rate caps from being exceeded. The energy component of the LTPPAs is not involved in the determination of whether the rate caps are exceeded. RS Ex. 1.2 at 1-2; RS Ex. 5.0 Rev. at 8-9; RS Ex. 5.2 at 5-8.

Witnesses for other parties contended that the primary proposal should not be adopted because it would result in higher charges to eligible retail customers. Staff Ex. 1.0C at 4; ComEd Ex. 1.0 at 13-14; Ameren Ex. 1.0 at 4; IPA Ex. 1.0R at 9. Their contention is based on the fact that under the method currently being used to implement curtailments of the LTPPAs, purchases of both RECs and the associated energy are curtailed. The Renewables Suppliers submit that the method currently being used should not be assigned the presumption of correctness that the other witnesses seem to assign to it. The issue of the appropriate method for implementing curtailments did not receive the attention in Docket 12-0544 that it is receiving in this case, and it is specifically the purpose of this rehearing to determine if a different method of implementing curtailments should be adopted. RS Ex. 1.2 at 2-3; RS Ex. 5.2 at 4. More importantly, customers pay less under the current method than they would under the Renewables Suppliers’ primary proposal solely because the current method curtails more payments to the LTPPA suppliers than is necessary to prevent the RPS rate caps from being exceeded. RS Ex. 5.2 at 4-5. The other witnesses’ position is tantamount to saying that customers are harmed if, in a utility rate case, the Commission increases rates to cover new or increased costs for a legitimate rate base or operating expense item.

The appropriate comparison for determining whether utility customers are harmed by the

Renewables Suppliers' primary proposal is a comparison of what customers pay if there is no curtailment versus what they pay under the proposal if there is a curtailment. Under the primary proposal, if it is determined that a curtailment of a utility's LTPPAs is needed, its customers pay less than if there were no curtailment. Specifically, the customers are charged less by the amount necessary to prevent the RPS rate caps from being exceeded – purchases of RECs are curtailed to the extent needed to keep the price caps from being exceeded, and the customers are not charged for the curtailed RECs. RS Ex. 1.2 at 2; RS Ex. 3.3 at 6; RS 5.2 at 4. Further, as noted earlier, the utility's customers are charged the same price for the energy associated with curtailed RECs as they are charged for the energy associated with RECs that are not curtailed.¹⁰ RS Ex. 1.2 at 2.

Moreover, under some circumstances the primary proposal will reduce costs to eligible retail customers as compared to the current curtailment methodology. RS Ex. 5.2 at 5. The energy price component of the LTPPAs provides an energy price hedge benefit for the utility's eligible retail customers.¹¹ Each LTPPA has a fixed Contract Price for the term of the contract (the base year Contract Price plus 2 percent per year escalation). Taking into account the imputed REC price, the LTPPA provides an energy price hedge equal to the projected energy price from the 2010 FEC. RS Ex. 1.0 at 16. In purchasing an energy price hedge, the buyer is agreeing that the contract price may exceed the current market price at times, in exchange for the protection and certainty that if the market price increases to be greater than the hedge price, the buyer's cost is capped at the hedge price. The buyer is purchasing insurance against the market

¹⁰ In analyzing the utilities' energy supply requirements for the 2014-2015 plan year, the IPA Plan includes the contracted energy quantities under the LTPPAs in the utilities' contracted energy supplies for 2014-2015. See "Objections of the Renewables Suppliers Regarding the Illinois Power Agency's 2014 Procurement Plan" at 11-12; December Order at 160-161.

¹¹ Energy hedging is a customary, prudent and widely accepted practice used in the energy industry to protect customers against volatile and potentially uncapped energy prices. Purchasers of hedges recognize that market prices may be lower than the hedge price, due to various unpredictable factors, but they use this contracting structure to protect themselves or their customers against extreme (high) electricity prices to the extent such prices exceed the hedge price. RS Ex. 1.0 at 15-16.

price rising above the contract price.¹² RS Ex. 1.0 at 17.

Under the LTPPAs, if the DAH-LMP (*i.e.*, the current market price of energy) is higher than the energy price in the 2010 FEC, the utility pays the supplier, and charges the eligible retail customer, only the energy price in the 2010 FEC, not the current market price. The utility's customers receive a price benefit equal to the difference between the energy price in the 2010 FEC and the higher current wholesale market energy price. RS Ex. 1.0 at 15-16; RS Ex. 5.2 at 5.

In fact, this has happened in two recent months, January and February (and part of March) 2014. The DAH-LMPs for those months in the ComEd and Ameren load zones were higher than the energy price in the 2010 FEC. Staff Ex. 1.0C at 7-8; IPA Ex. 1.0R at 10. Therefore, for these periods, ComEd and Ameren customers were charged less than the current market price for energy purchased under the LTPPAs. Had the Renewables Suppliers' primary proposal been in effect during this period, ComEd eligible retail customers also would have been charged less than the current market price for the energy associated with curtailed RECs. The experience of early 2014 illustrates that the Renewables Suppliers' primary proposal is balanced and equitable for utility customers. It also demonstrates the value of the energy price hedge embodied in the LTPPA pricing. RS Ex. 1.2 at 3; RS Ex. 5.2 at 8.

Overall, in the period since June 2012 when the LTPPAs went into effect, the monthly DAH-LMPs have been lower than the prices in the IPA's 2010 FEC, and it is anticipated that this will continue to be the case in the near-term future.¹³ However, over the remaining 18-year term of the LTPPAs, it is possible that factors impacting the market prices of electricity will result in DAH-LMPs exceeding the applicable price in the 2010 FEC for periods of time, in which case the Renewables Suppliers' primary proposal will result in reduced charges to customers for the energy associated with any curtailed RECs. RS Ex. 5.2 at 8. The energy price hedge component

¹² Staff witness Mr. Zuraski agreed that the LTPPAs provide an energy price hedge, although he observed that to date during the term of the LTPPAs, the market prices of energy have generally (though not always) been below the LTPPA energy hedge price. Staff Ex. 1.0C at 7-8, 11.

¹³ See Staff Ex. 1.0C at 7-10; IPA Ex. 1.0R at 10; IPA Cross Exs. Ameren-1 and ComEd-1.

of the LTPPAs provides the utilities' eligible retail customers with long-term price certainty associated with a fixed energy hedge that is not adjusted due to current and future market conditions such as natural gas price spikes and incremental environmental costs. RS Ex. 1.0 at 18. Customers are paying for and receiving this price hedge benefit when they pay for the energy component of the LTPPAs.

Although related more directly to the public interest benefits of the Renewables Suppliers' primary proposal, there is one additional way in which the primary proposal does not harm, but rather benefits, utility customers. As discussed in the next subsection, adoption of the primary proposal will help to restore confidence in the renewable generation development and investment communities in entering into long-term contracts to serve the demand for renewable energy in Illinois. Long term contracts are the lowest cost and most efficient means of financing the construction of new renewable generation resources. RS Ex. 3.0 at 4-8; RS Ex. 3.2; RS Ex. 4.0 at 3. Therefore, adoption of the primary proposal should result in lower long-term RPS compliance costs in Illinois, thereby benefitting customers.

2. The Primary Proposal is in the Public Interest

Adoption of the Renewables Suppliers' primary proposal is in the public interest because it will restore the confidence of renewable energy developers and investors in entering into long-term supply contracts to serve the Illinois market and in developing new wind generation facilities in Illinois and to serve the Illinois market. The curtailments of purchases under the LTPPAs and the method of implementing the curtailments, in which the LTPPA suppliers are deprived of more revenues than is necessary to comply with the RPS rate caps, has reduced the revenues that the LTPPA suppliers reasonably expected to receive under their contracts, and has created uncertainty as to the revenues they can expect from the LTPPAs. Although the purchases of curtailed RECs (at the imputed REC prices) by ComEd and the IPA has reduced the revenue losses, the LTPPA suppliers are still experiencing revenue shortfalls due to the

curtailment of purchases of the energy associated with the curtailed RECs. RS Ex. 2.0 at 3; RS Ex. 4.0 at 3. Adoption of the primary proposal will eliminate this revenue shortfall.

Prospective developers and suppliers of renewable resources need to have reasonable expectations of revenue certainty in the long-term contracts they enter into, or they will not enter into contracts or develop projects to serve Illinois (or will do so only at much higher prices). The current method of implementing curtailments, which deprives the LTPPA suppliers of more revenue than necessary to comply with the RPS rate caps, creates uncertainty in this regard. RS Ex. 1.0 at 15; RS Ex. 3.3 at 5; RS Ex. 5.2 at 17-18. If the reasonable expectations of renewable energy developers and suppliers, and their lenders and investors, concerning the revenues to be received under long-term contracts are not realized, then in the future, prospective renewable generation developers may be unwilling to invest capital and develop new projects within Illinois or to serve Illinois, and may be unable to obtain financing for such projects. This outcome would deprive the State of the environmental and economic development benefits of new wind projects, and could result in higher financing costs for projects, reduced supplies of renewable energy and RECs, and higher RPS compliance costs, all to the detriment of retail electricity customers in Illinois. These outcomes would not be in the public interest.

Renewables Suppliers witness Eric Thumma of Iberdrola Renewables explained that because wind generation facilities have no fuel costs and low overall operating costs, their primary cost is the initial capital investment, which typically must be amortized and recovered over a 20-year period. As a result, for investors to decide to invest in wind farms, they must be confident that there are long-term revenue streams sufficient to provide for recovery of the capital costs and a reasonable rate of return on capital.¹⁴ RS Ex. 3.0 at 4-6, 10; RS Ex. 3.3 at 2-3;

¹⁴ This is not a new situation in the utility industry; much of the existing conventional generation was financed and built in a regulated rate-of-return investment environment that provided reasonable certainty of long-term capital recovery. RS Ex. 3.0 at 5; RS Ex. 3.3 at 1-2. The point of this comparison is not to raise an “incumbent generators versus wind generators” argument, but rather to underscore the reality that to invest in long-lived, capital-intensive facilities in the energy industry, investors require reasonable certainty of long-term capital recovery.

see also RS Ex. 4.0 at 3. Wind generation projects receive revenues from the federal production tax credit (when available) and (to a lesser extent) from payments for capacity; however, they must also receive sufficient revenues from the sale of RECs and energy to have sufficient overall revenues to finance, recover and earn a return on the capital investment.¹⁵ RS Ex. 3.0 at 4; RS Ex. 3.3 at 3-4. Fixed-price long-term supply contracts are the most efficient and lowest-cost means to ensure adequate capital recovery and revenue adequacy for wind farm investments. Other forms of development, such as purely merchant projects (*i.e.*, projects, without a long-term customer(s), that are dependent on spot market sales) and hybrid merchant/contract projects, will have higher costs of capital and therefor higher overall costs. RS Ex. 3.0 at 5-8, 10; RS Ex. 3.2; RS Ex. 4.0 at 3.

It is estimated that, taking into account both load served by utilities and load served by ARES, approximately 8,000 MW of wind generation facilities will be needed to meet the Illinois statutory RPS requirement of 25% renewable energy supply in 2025 (as compared to approximately 3,600 MW currently in service). This will require substantial capital investment in new wind generation facilities. RS Ex. 3.0 at 3-4, 10; RS Ex. 3.1; RS Ex. 5.0 Rev. at 10-11. Mr. Thumma opined that it is unlikely that the renewable generation needed to achieve Illinois' RPS requirements will be achieved without the availability of long-term supply contracts. RS Ex. 3.0 at 8. Potential investors in wind energy projects will only initiate these investments if they believe they can recover their capital costs and earn a reasonable, risk-adjusted return. *Id.* at 10; RS Ex. 3.3 at 2-3. However, the riskier the prospects for capital recovery of a wind generation project, the higher will be its costs of debt and equity, and thus the higher its costs to customers. RS Ex. 3.0 at 6-7. Actions and policies which undermine confidence in long-term power purchase agreements will necessarily dampen investors' interest in new renewable energy

¹⁵ Wind farms are primarily energy resources, not capacity resources, and therefore revenues from capacity payments are generally a small portion of a wind generation project's revenue stream. Wind generation projects also benefit (or have benefitted) from accelerated depreciation and from the now-expired federal §1603(b) grant program, as initial sources of capital. RS Ex. 3.0 at 4; RS Ex. 3.3 at 3.

projects to meet Illinois' RPS requirements and the overall demand for clean electricity in Illinois. Accordingly, factors which discourage entry into long-term supply contracts, such as the current method of implementing curtailments to meet the RPS price caps, must be addressed. RS Ex. 3.3 at 2-3. If the LTPPA suppliers do not receive the revenues anticipated under these existing contracts, this will signal to investors that they must either earn higher returns to account for the potential regulatory risks of doing business in Illinois – which will raise RPS compliance costs and increase the likelihood that the RPS rate caps will be triggered in the future – or they will seek to deploy their capital in other jurisdictions with less risk. RS Ex. 3.0 at 10.

The negative impacts described by Mr. Thumma of the current method of implementing the LTPPA curtailments are being manifested in Illinois. The Renewables Suppliers' witnesses included John DiDonato, Vice President of Wind Development for NextEra, which owns and operates the largest portfolio of wind generation projects in North America (RS Ex. 2.0 at 1); and William Whitlock, Executive Vice President-Eastern Region of EDPR, which was one of the first companies to develop and operate wind farms in Illinois and has the largest wind generation fleet in the State. RS Ex. 4.0 at 4. Both witnesses testified that their companies have stopped project development activities in Illinois due to uncertainties arising from the curtailments and the significant revenue losses on their LTPPAs. RS Ex. 2.1 at 2; RS Ex. 4.0 at 4-5.

Mr. DiDonato testified that as a result of the recent regulatory actions in Illinois related to the curtailments, his development team is not looking at potential sites in Illinois for new wind generation projects; instead, NextEra is pursuing new renewable energy development in other states, including Michigan, Kansas and Oklahoma. RS Ex. 2.0 at 4-5; RS Ex. 2.1 at 2. He stated that the key factor in NextEra's decision not to develop any further projects in Illinois at this time is the revenue losses due to curtailments under its LTPPA with ComEd. RS Ex. 2.1 at 1. Mr. DiDonato emphasized that the fact that NextEra is experiencing revenue losses greater than required to satisfy the RPS rate caps calls into question why NextEra should develop any future

projects or enter into any future contracts in Illinois. *Id.* at 3 (emphasis added).

Mr. Whitlock testified that EDPR has more than 500 MW of new projects in Illinois that are near construction-ready, with transmission agreements signed, years of meteorological data compiled to measure wind speeds, and local permits secured. However, with the increasing concerns relating to the current Illinois RPS procurement situation that does not offer prospects for additional long-term contracting in the foreseeable future, and with EDPR's existing Illinois LTPPAs being curtailed, thereby subjecting EDPR to fluctuating and uncertain revenues on the contracts, Illinois has become a much less attractive market. RS Ex. 4.0 at 4. Mr. Whitlock stated that for EDPR, the most crucial factor in determining where to deploy development capital is the ability to obtain certainty of long-term revenue streams over the life of a project. RS Ex. 4.1 at 1, 3. As a result, EDPR has not proceeded to construction on any of the 500 MW of new projects and currently has no projects under construction in Illinois. RS Ex. 4.0 at 4. Instead, EDPR has terminated interconnection queue positions and interconnection agreements for proposed Illinois projects and has redeployed its capital and its development employees away from Illinois into other markets where it can get long-term contracts that have stable expected revenue streams.¹⁶ RS Ex. 4.0 at 4-5; RS Ex. 4.1 at 2.

NextEra's and EDPR's experience and reactions are apparently not unique. The American Wind Energy Association reports that zero MWs of new wind farms were placed into operation in Illinois in 2013. Further, while there are over 12,000 MWs of new wind power facilities under construction across the U.S., zero MWs of these projects are in Illinois. No projects have been constructed or moved into operation in Illinois since the LTPPA curtailments started occurring. RS Ex. 4.1 at 2.

¹⁶ Mr. Whitlock stated that in the past year, EDPR has signed long-term off-take contracts for projects to be constructed in California, Kansas, Oklahoma, Indiana and Maine for a total of 950 MWs of wind farms, and is now in the process of late-stage development or construction of these 950 MWs of new wind farms. All of these projects are under long-term contracts for which EDPR has full confidence in the counterparty fulfilling the expected revenue requirements. RS Ex. 4.0 at 4-5; RS Ex. 4.1 at 1.

Moreover, other states, including states nearby to Illinois, also have renewable energy requirements. Illinois, therefore, is competing for additional wind generation projects with other states that provide opportunities for development capital and resources if long-term contracts in Illinois are uncertain or unreliable. RS Ex. 5.0 Rev. at 19. The current method of curtailing the LTPPAs, however, produces a disincentive to build new renewable generation plants to meet the Illinois RPS requirements, because it prevents the LTPPA suppliers from earning sufficient revenues to recover costs. As a result, facilities that could have been built to meet the Illinois RPS requirements will likely be built to meet the needs of states that provide better opportunities to receive sufficient revenues to recover costs. RS Ex. 5.0 Rev. at 21-22; RS Ex. 5.2 at 16. As Renewables Suppliers' witness John Reed explained:

[F]uture 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. (RS Ex. 5.0 Rev. at 11-12.)

Further, as Mr. DiDonato of NextEra testified:

Q. How do wind developers like NextEra look at the current situation in Illinois?

A. Based on my extensive experience in wind development across the United States, I believe there are three key considerations in assessing the current situation. First, the long-term PPAs are the only real PPA options that have been presented to wind energy developers in Illinois. Second, merchant generation development without a long-term PPA is not a financeable investment, and we do not forecast any new merchant wind generation to be built in this part of the country. Third and perhaps most importantly, the significant level of curtailments in Illinois resulting in reduction of the contracted revenues sends a very clear signal to the market that curtailments have happened once and will likely happen again and continue into the future in Illinois. Unless the concerns relating to the lack of revenue certainty for long-term PPAs are satisfactorily addressed, this is not a market that any sensible wind developer would want to enter for the foreseeable future. (RS Ex. 2.1 at 3.)

The uncertainty created by the current LTPPA curtailment methodology, which deprives the LTPPA suppliers of more revenue than is necessary to comply with the RPS rate caps, creates a disincentive to renewable energy suppliers to invest in resources to meet the Illinois RPS. The disincentives to development of new renewable generation projects in Illinois that the current curtailment methodology creates are not in the public interest. RS Ex. 3.0 at 10; RS Ex. 5.0 Rev. at 20-21; RS Ex. 5.2 at 17-18. Elimination of these disincentives through adoption of the Renewables Suppliers' primary proposal – which will eliminate the energy revenue shortfalls that LTPPA suppliers are experiencing under the present method of implementing curtailments – is in the public interest. Creating and maintaining conditions that foster development of new renewable generation projects in Illinois or to serve the Illinois market is in the public interest, for numerous reasons.

- The General Assembly, as the public policy of the state of Illinois, has established an objective of meeting 25% of the State's electricity requirements from renewable resources by 2025. RS Ex. 5.0 Rev. at 10. As stated above, construction of significant additional renewable generation – whether in Illinois, or in nearby states to serve Illinois – will be needed to meet this statutory objective. Moreover, the Renewables Suppliers submit that the General Assembly established the RPS not simply to require utilities and ARES to purchase RECs from out-of-State sources, but to incent the development of physical renewable generation assets in Illinois.¹⁷
- Renewable generation has a beneficial impact on the environment. Renewable generation is a clean source of energy that protects our environment. Renewable resources typically do not have the air quality, water quality or toxicity issues that fossil fuel resources have; renewable resources thereby provide environmental benefits to the states in which they are located. RS Ex. 5.2 at 15. It is not in the public interest to discourage renewable generation projects in or near to Illinois.
- Wind and solar generation projects, which have zero fuel costs and low marginal operating costs, contribute to lower overall wholesale power prices, which benefits consumers.¹⁸ RS Ex. 1.0 at 19. Due to their zero fuel costs, wind and solar generation

¹⁷ In addition to the specific RPS requirements in §1-75(c) of the IPA Act and §16-115D of the PUA, §1-5(5) of the IPA Act 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,” while §1-5(7) of the IPA Act states a legislative finding that “renewable energy are resources currently underused in Illinois.” 20 ILCS 3855/1-5(5), 1-5(7). Prior to enactment of the RPS, Illinois had approximately 100 MW of installed wind generation capacity; today it has approximately 3,600 MW of installed wind capacity. RS Ex. 5.0 Rev. at 10-11.

¹⁸ The IPA's *Annual Report: The Costs and Benefits of Renewable Resource Procurement in Illinois Under the Illinois Power Agency and Illinois Public Utilities Acts*, dated March 30, 2012, concluded that

projects provide a long-term fixed energy price which in turn provides a hedge for consumers against price uncertainty and volatility from both short-term events (*e.g.*, power plant outages, weather conditions or fuel price spikes) and long-term changes (*e.g.*, long-term increases in fuel commodity prices, incremental environmental costs, and other factors). *Id.* at 18; RS Ex. 3.0 at 7-8.

- The use of long-term supply contracts to support construction of renewable generation to meet Illinois' RPS requirements will produce lower RPS compliance costs (and lower costs for clean energy generally), thereby benefitting electricity consumers. As described earlier, long-term supply contracts provide the most efficient and lowest cost means to finance new renewables projects, which will produce lower costs of capital for these projects and ultimately lower costs to consumers. Also, lower costs for renewable resources will reduce the risk that the RPS rate caps will be triggered, which would prevent the full RPS requirements from being met. RS Ex. 1.0 at 19; RS Ex. 3.0 at 7, 10; RS Ex. 5.2 at 17-18.
- Construction and operation of renewable generation projects in Illinois can produce significant economic development benefits for the State and for the localities in which the plants are constructed. Renewable energy project development is a labor-intensive undertaking and relies on many components that are manufactured in the U.S. Jobs are created in manufacturing, construction, operations and maintenance.¹⁹ Further, renewable generation projects are primarily developed in rural areas and can stimulate economic activity needed in these areas. Development of renewable generation facilities can have strong positive effects on rural communities as a result of employment, incremental property tax and other tax revenues, and industrial and municipal revitalization. RS Ex. 5.0 Rev. at 20; RS Ex. 5.2 at 15-16. However, if development of renewable generation in Illinois is discouraged as a result of the current curtailment methodology, Illinois will not realize the benefits of this economic development activity, and these benefits may instead be captured by other states. RS Ex. 5.0 Rev. at 21; RS Ex. 5.2 at 16.

In addition to the testimony of the RS' witnesses, IPA Director Star testified, “[T]he IPA strongly believes in finding ways to develop cost-effective new resources – including renewable resources – within Illinois’ borders, among other things, because of the economic development impacts;” and that “new development of renewable resources in Illinois helps meet several important goals including, increased diversity in the supply portfolio, and reducing emissions from fossil fuels generation necessary to meet our supply needs.” IPA Ex. 1.0R at 15, 17.

the integration of renewable resources into the power grid led to wholesale cost savings for Illinois of \$176.85 million in 2011. RS Ex. 1.0 at 19.

¹⁹ Input/output studies have concluded that, on average, more jobs are created for each unit of electricity generated from renewable sources than from fossil fuels. One study has suggested that about 17 manufacturing jobs are created for every MW of renewable power developed, which translates into over 2,500 jobs for a 150 MW utility-scale wind farm. RS Ex. 5.0 Rev. at 20.

Adoption of the Renewables Suppliers' primary proposal will eliminate the revenue shortfall that the LTPPA suppliers are presently experiencing due to the current methodology of implementing curtailments, and will remove the disincentives to developing new renewable generation projects in Illinois and in nearby states to serve the Illinois market. Settlement of the energy associated with curtailed RECs on the basis of the difference between the energy price in the 2010 FEC and the current DAH-LMPs, coupled with the continued purchase of curtailed RECs at the "Appendix K" imputed REC price by the utility using accumulated hourly ACP funds and (to the extent necessary) by the IPA using the RERF, will provide the LTPPA suppliers with the full revenue stream contracted for in the LTPPAs. This should restore confidence that long-term supply contracts to serve the Illinois RPS market will be a reliable source of revenue to recover the costs of new renewable generation projects. RS Ex. 1.0 at 13-14; RS Ex. 2.0 at 5; RS Ex. 3.0 at 8-9; RS Ex. 4.0 at 4.

3. Settlement Mechanics for the Primary Proposal

Under the Renewables Supplier's primary proposal, in the event of a curtailment of REC purchases under a utility's LTPPAs to meet the RPS rate caps, the utility would curtail its purchases of RECs in the percentage necessary to meet the rate caps, but would continue to settle with each LTPPA supplier on a monthly basis for the energy associated with the curtailed RECs, at a price equal to the 2010 FEC price less the DAH-LMPs during the month. Curtailing only the REC component of the LTPPA is a simple calculation that can be performed during the monthly settlements process. Specifically, the entire contract quantity of the LTPPA (RECs plus energy) would be settled as usual, but an offset for the curtailed RECs would be calculated by multiplying the following three quantities: (1) the total monthly production of the facility (not exceeding the maximum contract quantity), (2) the curtailment percentage, and (3) the imputed REC price calculated in accordance with Appendix K (Contract Price less 2010 FEC price). This offset amount would be deducted from the normal monthly settlement amount under the

LTPPAs.²⁰ RS Ex. 1.0 at 18. Renewables Suppliers witness Mr. Gordon described this settlement mechanism for the primary proposal in his direct testimony on rehearing, and no other witness proposed an alternative mechanism.

B. Renewables Suppliers' Secondary Proposal

1. The Secondary Proposal Will Not Harm Utility Customers

The Renewables Suppliers' secondary proposal would not harm the utility's customers. Under the secondary proposal, eligible retail customers continue to receive the full protection of the statutory RPS rate caps. In fact, the secondary proposal does not involve any charges to the utility's eligible retail customers. As AIC witness Mr. McCartney correctly pointed out, the secondary proposal "would not result in higher costs to eligible retail customers" and "[i]n fact, it would not incrementally result in higher costs for any customers." Ameren Ex. 1.0 at 6.

Under the secondary proposal, if a curtailment were needed, the utility would curtail purchases of both RECs and the associated energy under the LTPPAs in the specified percentage; *i.e.*, the current curtailment methodology would continue to be used. The utility would then use its accumulated balance of hourly ACP funds to purchase curtailed RECs from the LTPPA suppliers at a price equal to the Contract Price less the DAH-LMPs. The hourly ACP funds are collected from the utility's customers served on its hourly pricing tariffs; these customers are not "eligible retail customers." RS Ex. 1.0 at 20. Further, when the utility uses its accumulated hourly ACP funds to purchase curtailed RECs, it does not charge the hourly pricing customers for the cost incurred to purchase the curtailed RECs, nor to "restore" the balance of hourly ACP funds. *Id.* at 20-21.

Because it is anticipated that, depending on the extent of the curtailment and other variables, the utility's accumulated hourly ACP funds may be insufficient to purchase all curtailed RECs under the secondary proposal, it is expected that the IPA will continue to

²⁰ The normal monthly settlement amount is Contract Price less generation-weighted DAH-LMP) times the amount of energy generated for the month (up to the LTPPA contract maximum). RS Ex. 1.0 at 18.

purchase any remaining curtailed RECs, using the RERF.²¹ The purchase of curtailed RECs by the IPA using the RERF also does not involve any charges to the utility's eligible retail customers. The source of funds in the RERF is ACPs paid by ARES to the IPA in respect of the ARES' kwh sales to their customers. RS Ex. 1.0 at 20; 220 ILCS 16-115D(d). Obviously, an ARES customer is not an eligible retail customer of an electric utility. RS Ex. 1.0 at 20. Further, the amount of ACPs that an ARES is required to make or voluntarily makes into the RERF, pursuant to §16-115D(d) of the PUA, is completely independent of how the IPA spends the monies in the RERF.²² RS Ex. 1.0 at 20-21.

2. The Secondary Proposal is in the Public Interest

The Renewables Suppliers' secondary proposal is in the public interest for similar reasons as the primary proposal: the secondary proposal will help to restore revenue certainty to the LTPPAs and thereby restore confidence in long-term supply contracting for renewable generation projects in Illinois and to serve the Illinois renewables market, thereby supporting development of future projects. Under the current curtailment methodology, the LTPPA suppliers are losing revenues equal to the difference between the 2010 FEC price and the current DAH-LMPs. The secondary proposal addresses this shortfall by providing for the utility (and the IPA if it voluntarily chooses to do so) to purchase curtailed RECs at an imputed REC price equal to the LTPPA Contract Price less the DAH-LMPs, thereby eliminating the revenue shortfall created by the difference between the projected price in the 2010 FEC and the current

²¹ At this time, the IPA has indicated that it would only purchase curtailed RECs at the "Appendix K" imputed REC price, not at the price contemplated by the secondary proposal (Contract Price less DAH-LMPs). IPA Ex. 1.0R at 12-13; RS Ex. 1.2 at 5.

²² The December Order, in describing the secondary proposal, stated at p. 181: "It appears to the Commission that the only basis for the RS' alternative proposal is to produce current economic benefits to the LTPPA supplier at costs paid by ComEd's and AIC's eligible retail customers. . . [I]t is not clear how or why shifting costs from the suppliers to the utilities' customers is fair or in the public interest." With all due respect, this passage reflects a complete misunderstanding of the secondary proposal. As described above (and as noted by AIC witness Mr. McCartney), the secondary proposal does not require the utility's eligible retail customers to pay for curtailed RECs and involves no additional charges to eligible retail customers or to any utility customers.

wholesale market energy price. This REC price calculation is also equivalent to the financial settlement mechanism in the LTPPAs. Further, the secondary proposal maintains the statutory RPS price caps for eligible retail customers. RS Ex. 3.0 at 9-10.

The Renewable Suppliers have presented the alternative proposal as a second-best choice (from their perspective) to the primary proposal for two reasons. First, the primary proposal is structurally preferable because it flows directly and logically from, and is consistent with, the method the IPA uses, and the Commission has approved, for determining the imputed price of RECs and for determining if the RRB will be exceeded and whether and to what extent a curtailment of REC purchases under the LTPPA is necessary. Second, the secondary proposal does not provide the same degree of predictable revenue certainty for LTPPA suppliers in the event of curtailments as does the primary proposal, because the utility's ability to buy the full amount of curtailed RECs at the imputed REC price defined by the secondary proposal is limited by the utility's accumulated balance of hourly ACP funds. Depending on (i) the extent of the curtailment, (ii) the difference between the energy price in the 2010 FEC and the current DAH-LMPs, and (iii) the accumulated balance of the utility's hourly ACP funds, the utility's hourly ACP funds may or may not be sufficient to purchase all the curtailed RECs in a year under the secondary proposal.²³ RS Ex. 1.2 at 4-5, 10-11. Because it would be questionable from year to year whether the utility would have sufficient accumulated hourly ACP funds to purchase all the curtailed RECs at the imputed REC price provided for in the secondary proposal, the secondary proposal would not provide the same predictable revenue certainty under the LTPPAs as would the primary proposal. RS Ex. 1.2 at 4-5, 10.

²³ The IPA has indicated that it would continue to use the RERF to voluntarily purchase curtailed RECs that the utility has insufficient funds to purchase, but only at an imputed REC price equal to the Contract Price less the 2010 FEC price. IPA Ex. 1.0R at 12-13. Concerns about sufficiency of funding under the secondary proposal would be eliminated or greatly reduced if the IPA were to voluntarily purchase curtailed RECs at a price equal to the Contract Price less the current DAH-LMPs.

3. Settlement Mechanics for the Secondary Proposal

As noted above, the secondary proposal provides for the purchase of curtailed RECs by the utility at a price equivalent to the financial settlement terms under the non-curtailed portion of the LTPPA, specifically, Contract Price less DAH-LMPs. Purchases of curtailed RECs under the secondary proposal would be implemented as follows: Assuming a curtailment were declared for a year, the utility's accumulated balance of hourly ACP funds at the start of the year (June 1) would be used to purchase curtailed RECs during the year. At the start of the year, the utility's accumulated balance of hourly ACP funds would be allocated pro rata to the LTPPA suppliers based on the Annual Contract Quantity ("ACQ") of each supplier's LTPPA(s) to the aggregate ACQ of all the utility's LTPPAs. Going forward into the year, each supplier's allocated portion of the balance of hourly ACP funds would be used to purchase the full amount of that supplier's curtailed RECs in each month, unless and until that supplier's portion of the hourly ACP funds is exhausted. If a supplier's allocated portion of the hourly ACP funds is exhausted before the end of the year (May 31) by the utility's purchase of curtailed RECs from that supplier, the supplier can sell any remaining curtailed RECs for the remainder of the year to the IPA (assuming the IPA elects to purchase them, which presumably would be at a price equal to the "Appendix K" imputed REC price of Contract Price less 2010 FEC price). RS Ex. 1.2 at 9-10.

On a monthly basis, the utility would simply settle with the supplier each month for the curtailed RECs purchased with hourly ACP funds on the basis of the same price data used to settle the non-curtailed part of the LTPPAs, *i.e.*, the LTPPA Contract Price less the DAH-LMPs in that month. RS Ex. 1.2 at 10.

IV. Issues Raised by Other Parties' Witnesses Concerning the Renewables Suppliers' Proposals

AIC witness Mr. McCartney objected to adoption of the Renewables Suppliers' primary proposal but stated no position on the secondary proposal; as noted, Mr. McCartney pointed out that the secondary proposal does not involve additional costs to customers. Ameren Ex. 1.0 at 5-

6. ComEd witness Mr. Zahakaylo objected to the primary proposal but stated no position on the secondary proposal. ComEd Ex. 1.0 at 16. Staff witness Mr. Zuraski objected to adoption of either proposal but stated that if either proposal were adopted, it should be funded solely from the utilities' accumulated hourly ACP funds. Staff Ex. 1.0C at 4, 18. IPA witness Mr. Star stated that the IPA does not support the primary proposal but does support the secondary proposal so long as it is limited to the purchase of curtailed RECs by the utilities using hourly ACP funds.²⁴ IPA Ex. 1.0R at 8, 12-13. In addressing the Renewables Suppliers' proposals, the other parties' witnesses raised three principal areas of concerns (in addition to the concerns discussed in §III above), which are addressed in the remainder of this §IV.

A. Concern that Curtailments Due to Customer Shifting Were Foreseeable

The witnesses for ComEd, Staff and the IPA each presented some form of the following arguments: the conditions which would lead to customer shifting from utilities to ARES were in place at the time of the December 2010 long-term renewable resources procurement event; the LTPPA suppliers knew or should have known that there was a risk of curtailments of the LTPPAs due to load shifting, and the LTPPA suppliers should have submitted higher bids to compensate for these risks or taken other actions to protect themselves against these risks.²⁵ These arguments do not warrant rejecting the Renewables Suppliers' proposals.

As the Commission is well aware, the principal reason for the need to impose curtailments on the LTPPAs in order to stay within the RPS rate caps has been the large numbers of eligible retail customers switching from the utilities to ARES as the result of municipal aggregation programs.²⁶ RS Ex. 1.0 at 11. Although the amendment to the IPA Act authorizing

²⁴ The Renewables Suppliers understand Mr. Star's limitation on the secondary proposal to be based on the proposition that the Commission cannot direct the IPA as to how to use the RERF. *See* the 2014 IPA Plan at 106; Order in Docket 12-0544 (Dec. 19, 2012) at 113.

²⁵ ComEd Ex. 1.0 at 10-12; Staff Ex. 1.0C at 5-6; IPA Ex. 1.0R at 9, 11-12.

²⁶ The Commission recognized this in its order on the 2013 IPA Plan, Docket 12-0544 (Dec. 19, 2012), at 110. Although it was not necessary to impose a curtailment on the AIC LTPPAs for the current year (2013-2014) and it is unlikely one will be needed for 2014-2015, AIC, like ComEd, has experienced a

municipal aggregation programs was enacted in 2009, no successful municipal aggregation referenda were held in 2010 and only about 20 successful referenda were held in 2011.²⁷ It was the substantial number of “opt-out” municipal aggregation referenda held in 2012 and 2013 and the implementation of aggregation programs pursuant to those referenda, along with a significant price difference between the energy price in ComEd’s bundled service offering and the current market energy prices that ARES were able to offer to customers under municipal aggregation programs, that resulted in substantial customer switching from the utilities to ARES in 2012 and 2013.²⁸ *Id.* at 11-12; RS Ex. 5.0 Rev. at 13-19.

Renewables Suppliers’ witnesses acknowledged that the statute authorizing municipal aggregation was enacted in 2009 and that at the time of the December 2010 procurement event, they were aware that the contract terms for the LTPPAs provided for curtailments if needed to stay within the RPS rate caps, which could occur if the utilities lost sufficient customer load. RS Ex. 1.2 at 6; RS Ex. 2.0 at 4. However, at the time of the December 2010 procurement event, the LTPPA bidders reasonably anticipated that there was not a serious risk of curtailments due to load-shifting and the RPS rate caps being exceeded. RS Ex. 1.0 at 10; RS Ex. 2.0 at 4; RS Ex. 5.0 Rev. at 13-14. This is because, in order to ensure that the renewables costs of the LTPPAs would never exceed the RPS rate caps, the IPA adjusted downward the total annual MWh amount of renewables to be procured, and then awarded LTPPAs for an even smaller amount of renewables than planned. The quantity contracted under the LTPPAs was only 3.2% of ComEd’s forecasted energy requirements to serve its eligible retail customers. Thus, the IPA capped the quantity of renewables to be purchased at a small fraction of each utility’s anticipated

significant amount of load shifting to ARES due to adoption of municipal aggregation programs in the AIC service area. *See* the 2014 IPA Plan at 27-28.

²⁷ As of January 2011, the month following the LTPPA procurement event, only 0.03% of residential customers had switched away from ComEd. RS Ex. 1.2 at 6.

²⁸ An “opt-out” referendum authorizes the municipality to implement an aggregation program in which customers are automatically switched to the ARES selected by the municipality, unless the customer affirmatively elects to stay with the utility (or take service from another ARES). RS Ex. 5.0 Rev. at 15.

eligible retail customer load. RS Ex. 1.0 at 10; RS Ex. 5.0 Rev. at 14; RS Ex. 5.2 at 9. Additionally, the IPA projected what the 2012-2013 RRB would be, and imposed a budget cap for the 2010 LTPPA procurement at 30% of the estimated RRB.²⁹ That is, the IPA specified that the cost of renewables purchased through the LTPPA procurement event could not exceed 30% of the projected RRB for the 2012-2013 plan year.

Both of the measures the IPA implemented were intended to demonstrate prudence and conservatism with respect to the energy supply portfolio that the IPA was overseeing, and it does not appear that the amount of renewable resources being contracted through the LTPPAs was considered excessive at the time of the December 2010 procurement event. RS Ex. 1.0 at 10; RS Ex. 3.3 at 4; RS Ex. 5.2 at 9. Further, in structuring the December 2010 LTPPA procurement within these limits, the IPA had the advice and support of experienced and knowledgeable consultants as its Procurement Administrators. *Id.*

The LTPPA bidders reasonably relied on the precautions that the IPA took to significantly limit both the quantity and dollar amount of renewable resources procured in the December 2010 LTPPA procurement event, as eliminating the risk of curtailments of purchases under the LTPPAs due to load shifting away from the utilities. The other parties' witnesses who contended that the Renewables Suppliers should have been aware of the prospects of load shifting and, as a result, LTPPA curtailments, are contending that the bidders should have had greater foresight than the IPA.³⁰ RS Ex. 1.2 at 6; RS Ex. 5.2 at 9, 14.

Further, although several witnesses asserted that the LTPPA bidders should have taken actions to address the risk of load shifting from the utilities and possible curtailments under the LTPPAs, none of these witnesses suggested what actions the bidders should have taken, other

²⁹ 2012-2013 was the first year of the 20-year term of the LTPPAs. RS Ex. 1.0 at 10-11.

³⁰ Moreover, as Renewables Suppliers' witness John Reed described in detail, municipal aggregation in Illinois has been much more successful and has led to a much greater amount of customer switching in a shorter period than municipal aggregation programs in other states, including California, Massachusetts, New Jersey and Ohio. The experiences of other states did not provide an indication of the speed and extent to which municipal aggregation was successfully implemented in Illinois. RS Ex. 5.2 at 10-14.

than that they should have bid higher prices in light of the curtailment risk. *See* IPA Ex. 1.0R at 9, 12; ComEd Ex. 1.0 at 10-11; Staff Ex, 1.0C at 5-6. However, the assertion that bidders should have bid higher prices ignores the fact that selection of the winning bidders was not based solely on who bid the lowest prices. Rather, as specified in IP Act §1-75(c)(1) Act and PUA §16-111.5(e)(3), any bid to supply renewable resources in a utility procurement administered by the IPA (even the low bid) must also pass the “cost-effective” test of being equal to or less than confidential “benchmark” market prices for renewable resources in the region established by the IPA and its Procurement Administrator in consultation with the Procurement Monitor and Commission Staff, and approved by the Commission, or the bid will be rejected.³¹ Thus, any bidder’s desire to submit a higher bid price in light of perceived risks of the transaction was constrained by the need to assess what the regional benchmark market prices for renewable resources were likely to be, and keep the bid at or below the anticipated benchmark price.

Moreover, any bidder’s ability to submit a higher bid price in light of perceived risks was also constrained by the competitive nature of the bidding and procurement process. In formulating their bids, the bidders had to take into account competitive market conditions and the likely bidding strategies of the other bidders. It was precisely to subject the procurement of electricity to serve eligible retail customers to competitive market pressures that the procurement process established by §1-75(c) of the IPA Act and §16-111.5 of the PUA was enacted.

Further, by bidding to supply a specified amount of RECs and energy under a LTPPA, each bidder was committing to supply, if its bid were accepted, that amount of RECs and energy

³¹ Section 1-75(c)(1) states that “cost-effective” means that “the costs of procuring renewable energy resources . . . do not exceed benchmarks based on market prices for renewable energy resources in the region, which shall be developed by the procurement administrator, in consultation with the Commission staff, [IPA] staff, and the procurement monitor and shall be subject to Commission review and approval.” 20 ILCS 3855/1-75(c)(1). Similarly, §16-111.5(e)(3) of the PUA specifies that “the procurement administrator, in consultation with the Commission staff, Agency staff, and the procurement monitor, shall establish benchmarks for evaluating the final prices in the contracts for each of the products that will be procured through the procurement process. The benchmarks shall be based on price data for similar products for the same delivery period and same delivery hub, or other delivery hubs after adjusting for that difference.”

over a 20-year period, subject only to a potential risk of an unknown amount of curtailment of REC purchases in unspecified years, with the potential curtailment percentages varying from year-to-year (and possibly being a positive number in some years and zero in other years.) The need to hedge against possible curtailments could only have been known if the level of customer switching that would occur was knowable, which of course it was not. RS Ex. 5.2 at 24.

Moreover, the imputed REC prices that would be assigned to each LTPPA, and the annual determination of whether the RRB would be exceeded and a curtailment of REC purchases would be needed, were both critically dependent on the forecasted energy prices over the 20-year contract term in the IPA's confidential 2010 FEC. However, the confidential 2010 FEC was not disclosed to the bidders. RS Ex. 1.2 at 6. Additionally, the specific revenue loss that the Renewables Suppliers are seeking to mitigate through their proposals results from the difference between the energy prices in the IPA's 2010 FEC and the actual wholesale market energy prices that have been experienced in 2013-2014 and are expected to continue for at least the near term. Without access to the 2010 FEC at the time bids were submitted, the bidders could not know how much to hedge to mitigate their risks.³² *Id.*; RS Ex. 5.2 at 24.

In short, the type of (unspecified) risk management actions that the other parties' witnesses assert the LTPPA bidders should have taken would not have been possible based on the information available in December 2010 and the structure of the contracts to be bid on. The other parties' witnesses identified no hedging or other risk-management strategy that could have protected the bidders from the risks described above. The assertions that the Renewables Suppliers should have taken appropriate steps to protect themselves are simply hindsight. RS Ex. 5.2 at 24. In reality, the only strategies to avoid the risks that have manifested would have

³² Just as the bidders could reasonably rely on the precautions taken by the IPA to eliminate or minimize the risks of LTPPA curtailments due to load-shifting, the bidders could reasonably rely on the price forecast in the 2010 FEC – which was developed by the IPA's knowledgeable Procurement Administrator in conjunction with the Procurement Monitor and the IPA and Commission staffs – to be a reasonably accurate projection of future energy prices in the regional wholesale electricity markets. RS Ex. 5.2 at 24.

been to (1) refrain from bidding at all (thereby reducing the number of competitive bidders), or (2) bid significantly higher prices, either of which would have been detrimental to the competitive procurement process and ultimately to the interests of utility customers (and, in the case of the latter strategy, could have resulted in no bids satisfying the test of “benchmark” competitive regional market prices required by §1-75(c)(1) of the IPA Act). *Id.* at 24-25.

Finally, the question of whether the LTPPA bidders should have known of the risks of load-shifting and curtailment at the time of the December 2010 procurement event and what they should have done about those risks is a diversion from the problem the Renewables Suppliers are seeking to address prospectively through their proposals. The Renewables Suppliers were aware that the implementation of the contracts would be subject to the RPS rate caps and that the contract terms (which were not subject to negotiation) included a “regulatory out” provision under which the utility would not be required to pay the LTPPA suppliers for costs that the Commission ruled could not be recovered through charges to the utility’s customers.³³ RS Ex. 1.0 at 15; RS Ex. 1.2 at 6, 8. However, as shown in §II and §III above, (1) the revenue loss that the Renewables Suppliers are specifically seeking to mitigate with their proposals is the revenue loss due to the curtailment of the energy associated with curtailed RECs; (2) the curtailment of the energy associated with curtailed RECs and the loss of the related energy revenues is not necessary to comply with the RPS rate caps, and (3) the cost to the utilities of settling the energy associated with curtailed RECs, if the Renewables Suppliers’ primary proposal is adopted, is recoverable through the utilities’ tariffs (or, depending on the relationship between the current market price of energy and the price in the 2010 FEC, may result in a reduction of the charges to the utility’s customers). RS Ex. 1.0 at 15.

³³ Section 16-111.5(e)(2) of the PUA specifies that the contract terms are not subject to negotiation by the winning bidders, who as a condition to bidding must agree to accept the IPA’s contract terms. As Mr. DiDonato testified, in a typical power purchase agreement for a wind facility, curtailments are a primary term for negotiation, but there was no meaningful opportunity to negotiate the curtailment provisions of the LTPPAs. RS Ex. 2.1 at 1.

B. Concern that the Renewables Suppliers Are Attempting to Change the Contract Terms, and Impacts on Future Procurements

Witnesses for ComEd, Staff and the IPA contended that by their primary proposal, the Renewables Suppliers are attempting to change or renegotiate the terms of the LTPPAs.³⁴ Additionally, §IV.D.7 of the December Order, in describing the primary proposal, stated that “[t]he RS suggests the Commission should unilaterally change the terms of the contract to favor one party over the other party to the contract,” and characterized the primary proposal as requiring a change in the LTPPAs.³⁵ December Order at 179-180. However, the Renewables Suppliers are not proposing to change or renegotiate any terms of the LTPPAs; rather, they are asking the Commission to adopt a different method to implement curtailments, which is allowed for under the terms of the LTPPAs. RS Ex. 1.0 at 19-20; RS Ex. 1.2 at 7; RS Ex. 5.2 at 20-21.

The Renewables Suppliers explained why their primary proposal does not involve a change to the terms of the LTPPAs at pages 3-9 of the “Reply of the Renewables Suppliers to Responses to the Renewables Suppliers’ Objections to the Illinois Power Agency’s 2014 Procurement Plan,” filed in the original proceedings in this docket. As the Renewables Suppliers described in that filing, the relevant provision of the LTPPAs, which is in §D, Payment Obligations, in the “Confirmation” provision of the LTPPAs, states:

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(l) of the Illinois Public Utilities Act (220 ILCS 5/16-111.5(l)) 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.**

³⁴ ComEd Ex. 1.0 at 9-10; Staff Ex. 1.0C at 12; IPA Ex. 1.0R at 8. These assertions are directed at the primary proposal, which is directed at the method employed to implement curtailments, whereas the secondary proposal is directed solely at the price at which curtailed RECs are purchased using the utility’s accumulated hourly ACPs.

³⁵ The primary proposal in no way favors “one party” (the LTPPA suppliers) “over the other party,” because, the primary proposal does not require the utility to pay the suppliers for any costs that the utility cannot recover through its tariff.

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 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.]

The Renewables Suppliers recognize that the above-quoted provision specifies a default method for implementing curtailments, by reducing the quantity of “Product” purchased under the LTPPAs. However, the default method is conditioned by “unless otherwise directed by the Illinois Commerce Commission.” *Id.* at 3-4. The Renewables Suppliers are seeking to have a different method of implementing curtailments “directed by the Commission.” Moreover, while the above-quoted provision gives the utility the “regulatory out” protection of not having to pay the supplier for any costs that the utility is not allowed to recover through its tariff, this provision conditions the utility’s right not to pay a supplier on an order, rule or decision of the Commission specifying that the utility is not required to pay costs otherwise due the supplier under the LTPPA. Importantly, under the primary proposal, the utility is not required to pay the LTPPA supplier, pursuant to the contract, for any costs that the utility is not allowed to recover through its tariff.³⁶ Thus, the primary proposal preserves the fundamental objective of the above-quoted contract provision, specifically, the “regulatory out” protection for the utility.

The Renewables Suppliers’ primary proposal provides for a different method of implementing curtailments than heretofore used, but which still (1) preserves the existing method

³⁶ As ComEd pointed out in the 2013 IPA Plan case, purchases of curtailed RECs using ACP funds are independent purchases, not purchases or payments on the LTPPAs. Order in Docket 12-0544 (Dec. 19, 2013) at 77.

of determining REC prices under the LTPPAs and of determining whether the RRB is exceeded and a curtailment is needed; (2) prevents the RPS rate caps from being violated; and (3) as stated above, preserves the benefit of the “regulatory out” provision of the LTPPA for the utility, in that the utility is not required to make payments to the suppliers under the LTPPAs for costs that the utility cannot recover through its tariffs (*i.e.*, the utility will not be required to pay the suppliers under the LTPPA for curtailed RECs, but is allowed to recover, through its §16-111.5(l) tariff, the costs of the energy associated with the curtailed RECs).³⁷ RS Ex. 5.2 at 21.

A related concern expressed by the witnesses for ComEd and the IPA is that adopting the Renewables Suppliers’ primary proposal will inject uncertainty into future IPA procurements and would be unfair to the losing bidders in the December 2010 procurement. ComEd Ex. 1.0 at 12-14; IPA Ex. 1.0R at 8. However, as shown above, the Renewables Suppliers are not asking to have the LTPPA terms changed or renegotiated, and the Commission does not have to change or reinterpret the contract terms in order to adopt the Renewables Suppliers’ primary proposal. Further, as described above, the method of curtailment proposed in the primary proposal preserves the fundamental principles that (1) utility customers are not charged amounts for RECs in excess of the RPS cost caps, and (2) the utilities are not required to pay the LTPPA suppliers for costs that the utilities cannot recover through their tariffs. RS Ex. 5.2 at 21-22.

With respect to fairness to the losing bidders in the December 2010 procurement, there is no evidence as to what the losing bidders had in mind or what prices they bid, but as noted in §IV.A above, a bidder that substantially raised its bid to take into account a perceived risk of

³⁷ ComEd witness Mr. Zahakaylo contended that the primary proposal “shifts the risk of both current and future switching from the [LTPPA suppliers], as was intended in the contract, to the ComEd-supplied customers,” and that “[u]nder the terms of the LTPPAs, energy and REC purchases may be curtailed under certain circumstances in order to remain under the renewable cost cap.” ComEd Ex. 1.0 at 13. The primary proposal, however, continues to provide for curtailment of REC purchases to the extent needed “to remain under the renewable cost cap.” The ComEd witness failed to explain why the curtailment of energy is also necessary to “remain under the renewable cost cap.” The curtailment of energy has no impact on whether the RPS rate caps are met; it merely deprives the LTPPA suppliers of more revenue than necessary to comply with the RPS rate caps.

curtailments would be in danger of having its bid rejected because it exceeded the regional competitive market price benchmarks established by the IPA, as required by both the IPA Act and the PUA. More fundamentally, the Renewables Suppliers submit that any prospective bidder in a future IPA procurement event for renewable resources will welcome adoption of the Renewables Suppliers’ primary proposal as restoring revenue certainty to long-term renewables supply contracts in Illinois and eliminating the curtailment of contracted energy that deprives the supplier of more revenues that necessary to comply with the RPS rate caps. RS Ex. 5.2 at 23.

V. Conclusion

The Renewables Suppliers respectfully request that the Commission issue an Order on Rehearing adopting the Renewables Suppliers’ primary proposal pertaining to the method of curtailing purchases under the LTPPAs in order to comply with the statutory RPS rate caps.

Respectfully submitted,

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