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'

REPLY BRIEF ON REHEARING

****<u>PUBLIC VERSION</u>****

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I. Introduction and Summary of Reply

In their initial briefs, the other parties oppose adoption of the Renewables Suppliers' primary proposal and either support or take no position with respect to the secondary proposal:

- Ameren Illinois ("AIC") does not support adoption of the Renewables Suppliers' primary proposal and states that the Commission should only give consideration to the secondary proposal. AIC Initial Brief ("IB") at 1-2.

- Commonwealth Edison ("ComEd") opposes adoption of the primary proposal and states that the Commission should make no amendment to the procurement plan approved in its December 20, 2013 order ("December Order") in this docket, although ComEd only discusses the primary proposal and does not specifically discuss the secondary proposal. ComEd IB at 1-2, 12.

- Commission Staff ("Staff") opposes the primary proposal unless it is revised in a manner that, in essence, makes it the same as the secondary proposal. Staff also recommends that the secondary proposal be rejected unless it is modified, but Staff's proposed modification is not actually a change. Staff IB at 5; *see* RS Ex. 1.2 at 5.

- The Illinois Power Agency ("IPA") opposes the primary proposal and supports the secondary proposal, so long as it is limited to purchases of curtailed renewable energy credits ("RECs") using the utilities' accumulated hourly Alternative Compliance Payment ("ACP") funds. IPA IB at 13.

None of the other parties, however, have demonstrated that adoption of the Renewables Suppliers' primary or secondary proposals would harm utility customers, nor have they refuted the Renewables Suppliers' showing that adoption of the proposals is in the public interest. To the contrary, as shown in the Renewables Suppliers' Initial Brief and in this Reply Brief:

- The Renewables Suppliers' primary proposal will fully preserve the customer protections of the statutory renewable portfolio standards ("RPS") rate caps and will not harm utility customers. In the event the RPS rate caps would be exceeded by purchase of the full amounts under the long-term renewable resources power purchase agreements ("LTPPAs"), the primary proposal will result in reduced charges to customers, by the amount necessary to prevent the rate caps from being exceeded. The other parties' arguments that the primary proposal would harm utility customers is based on an inappropriate comparison to the current curtailment methodology (not to a comparison between "no-curtailment" and "curtailment scenarios") and is solely dependent on the continued denial to the LTPPA suppliers of more revenues than necessary to comply with the RPS rate caps.[1]

- The primary proposal does not eliminate curtailments. The Renewables Suppliers are not complaining about curtailments *per se*, but rather about the current curtailment

[1] As in the Renewables Suppliers' Initial Brief, the Renewables Suppliers are sometimes referred to herein as "RS," and the term "LTPPA suppliers" is used to refer to all the suppliers under the LTPPAs.

method which deprives them of more revenue than is necessary to keep the RPS rate caps from being exceeded. The point of the primary proposal is that curtailment of both RECs and the associated energy is not necessary in order to prevent the rate caps from being exceeded.

- The Renewables Suppliers' secondary proposal will not harm utility customers, and in fact does not involve any charges to utility customers. No party has shown otherwise. As AIC states, the secondary proposal has "no potential for the collection of incremental costs from customers." AIC IB at 3.

- The primary and secondary proposals are both in the public interest. The ability of renewable generation developers and suppliers to obtain long-term contracts with reliable, predictable revenue streams is critical to the development of cost-effective renewable resources for Illinois. The proposals will restore the confidence of renewable generation developers and investors in the Illinois procurement and contracting processes, and therefore restore confidence and interest in developing projects for the purpose of serving Illinois' RPS requirements and the demand for clean electricity in Illinois generally. This will provide numerous benefits to Illinois electricity consumers and the Illinois public.

- The benefits to Illinois electricity consumers and the Illinois public of adopting the primary or secondary proposal will include more competitive (and lower) pricing for renewable resources (because more suppliers will participate and they will not feel compelled to add "risk premiums" to their bids); greater supply of RECs; the environmental benefits of locating more renewable generation projects in Illinois; and the significant employment and economic development benefits of locating more renewable generation projects in Illinois.

- Adopting the primary proposal will not reduce confidence in the Illinois procurement process; rather, it will increase confidence, by restoring the confidence of potential bidders and suppliers that if awarded a contract, they will receive the revenues they contracted for.

- The primary proposal does not require any changes to the LTPPAs and does not violate the LTPPAs. The primary proposal is completely consistent with and permitted by the terms of the LTPPAs, which expressly provide that the Commission may direct how curtailments shall be implemented to comply with the RPS rate caps.

- It is an unremarkable and uninstructive fact that the LTPPAs are for a bundled product (energy plus RECs). The fact that the LTPPAs are contracts for the purchase of energy and RECs does not shed any light on how the curtailments should be implemented in order to keep charges to utility customers within the RPS rate caps.

- The primary proposal completely preserves the intent of the "regulatory out" section of the LTPPAs, and is completely consistent with the purpose of that provision, both as conveyed to the LTPPA bidders at the time of the procurement event and as written in the contract. The primary proposal (1) allows for curtailments of purchases of RECs, as determined by the Commission, to prevent the RPS rate caps from being exceeded, (2) prevents utility customers from being charged more for renewable resources than the RPS rate caps allow, and (3) preserves the "regulatory out"

protection for the utilities, as they are not required to pay the LTPPA suppliers amounts that the Commission does not allow them to recover through their tariffs.

- The secondary proposal also does not require any changes to the terms of the LTPPAs and in fact operates entirely outside of the LTPPAs.

II. The Renewables Suppliers' Proposals Will Not Harm Utility Customers

ComEd, AIC, and Staff contend that the Renewables Suppliers' primary proposal will harm utility customers because it will cause them to pay higher charges than under the curtailment method currently in effect. ComEd IB at 10-11; AIC IB at 7-8; Staff IB at 7. The IPA contends that the primary proposal could harm utility customers by adding uncertainty to future procurements (IPA IB at 4), an argument that will be addressed under public interest considerations in §IV below. None of these parties contends that the Renewables Suppliers' secondary proposal would harm utility customers.

The arguments of ComEd, AIC, and Staff that the primary proposal will harm utility customers are based solely on a comparison to the current curtailment method, not on a comparison between the "no curtailment" and "curtailment" scenarios. Their argument depends entirely on the fact that the current method deprives the LTPPA suppliers of more revenue than is necessary to prevent the statutory RPS rate caps from being exceeded. The curtailment of the energy associated with curtailed RECs does reduce charges to the utility's customers in the event of a curtailment, but this reduction has nothing to do with preserving the customer protection of the RPS rate caps. Under the "Appendix K" methodology approved by the Commission in Docket 09-0373, the RPS rate caps are fully complied with through the curtailment of purchases of the appropriate amount of RECs, priced at the imputed REC price determined in accordance with Appendix K. None of the other parties has refuted this point, nor shown that is necessary to curtail (and not pay the LTPPA suppliers or charge customers for) the energy associated with curtailed RECs in order to comply with the rate caps.[2]

[2] AIC expressly acknowledges that "the energy portion of the LTPPAs is outside the calculation of the RRB [Renewable Resources Budget]." AIC IB at 7.

Staff points out that to date, the energy component of the LTPPAs, priced in accordance with the IPA's confidential 2010 forward energy price curve ("2010 FEC"), has exceeded the current wholesale market price of electricity.[3] Staff asserts:

> 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 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. (Staff IB at 7.)

Staff's statement that under the primary proposal, customer rates would exceed the statutory rate cap, is incorrect. Under the Appendix K procedures, neither the amount of energy purchased under the LTPPA nor its price has anything to do with whether the rates to utility customers exceed the statutorily-defined price cap. Whether the rates to utility customers exceed the statutorily-defined price cap is determined solely based on the imputed REC prices under the LTPPAs and the amount of RECs purchased. Beyond making the bald assertion that "ratepayers would still be buying renewable energy resources at a price that exceeds the market prices, to an extent that will cause their rates to exceed the statutorily-defined price cap," Staff has utterly failed to show how purchasing the energy associated with curtailed RECs would cause the statutory RPS rate caps to be exceeded. To reiterate: the rationale for the primary proposal is that curtailment of REC purchases is sufficient to keep charges to customers within the RPS rate caps; curtailment of the energy associated with the curtailed RECs is not necessary to prevent the rate caps from being exceeded.

Although the LTPPAs were bid and entered into on the basis of a single Contract Price for both energy and RECs, the IPA and its Procurement Administrator developed the 2010 FEC to separate the bundled LTPPA bids into a REC component and an energy component and to

[3] However, as pointed out by IPA witness Mr. Star and Staff witness Mr. Zuraski, the 2013 FEC price has not consistently exceeded the current wholesale market price; in some months the wholesale market price of energy has exceeded the 2010 FEC price. In these months the energy hedge feature of the LTPPAs has resulted in lower charges to utility customers for energy. IPA Ex. 1.0R at 10; Staff Ex. 1.0C at 7-8; RS IB at-11.

determine if the LTPPA bids met the "cost-effective" requirement of §1-75(c)(1) of the IPA Act and §16-111.5(e)(3) of the Public Utilities Act ("PUA") based on comparison to market-based prices in the region. As required by §1-75(c)(1), all of the winning bids met this test (or they would have been rejected). However, whether purchases under the LTPPAs would meet the separate test of the RPS rate caps was determined – both at the time of the procurement event and on an annual basis going forward – solely based on the REC component of the LTPPAs. The energy component of the LTPPAs has nothing to do with the rate cap calculations and compliance. *See* RS IB at 4-6.

Somewhat similarly to Staff's argument, the IPA points out that through February 2014, based on the energy prices in the 2010 FEC, utility customers have paid more for energy under the LTPPAs than they would have if the same amount of supply had been purchased at current average hourly energy prices. IPA IB at 6-7. However, all that Staff's and the IPA's argument really shows is that to date, the forecasted energy prices in the IPA's 2010 FEC have been inaccurate. It may be an appropriate subject of inquiry as to why the IPA's 2010 FEC has, to date, proven in general to be higher than actual day-ahead hourly Locational Marginal Prices ("DAH-LMPs"). However, that is an inquiry that should be unrelated to the issue in this docket. The "solution" to the deviation between the IPA's 2010 FEC (which was not disclosed to the LTPPA bidders at the time of the procurement event) and actual wholesale energy prices is <u>not</u> to deprive the LTPPA suppliers of energy revenues under the contracts in the name of compliance with the RPS rate caps. Under the Appendix K procedure that the IPA developed and the Commission approved, compliance with the RPS rate caps is achieved solely and completely through curtailment of REC purchases in the necessary amount.

Further, the energy associated with curtailed RECs under the LTPPAs is equal to only a small percentage of the total energy requirements of the ComEd eligible retail customers and therefore would not have a significant impact on the total energy charges to eligible retail

customers. For the current plan year (June 1, 2013 – May 31, 2014), the total energy contracted for under the LTPPAs is equal to 11.3% of the energy requirements of ComEd's remaining eligible retail customers. RS Ex. 1.0 at 11. For the current plan year, the curtailment percentage under the ComEd LTPPAs is 18.64%. RS Ex. 1.0 at 12. Therefore the energy associated with the curtailed RECs is equal to only about 2.1% of the total energy requirements of the ComEd eligible retail customers (*i.e.*, 0.113 times 0.1864 = 0.021).

The appropriate analytical context for determining if the Renewables Suppliers' primary proposal will harm utility customers is a comparison of the charges to utility customers assuming no curtailment versus the charges to customers if a curtailment is determined to be needed to comply with the RPS rate caps. Under the primary proposal, in the curtailment scenario, the charges to the utility's customers are <u>reduced</u> from the charges in the no-curtailment scenario, through the curtailment of REC purchases at the imputed REC price, by exactly the amount needed to prevent the RPS rate caps from being exceeded. The utility, and ultimately its customers, would continue to purchase and pay for energy associated with the curtailed RECs at the same price they are charged for the non-curtailed energy that was contracted for. None of the other parties has shown why curtailment of energy associated with curtailed RECs is necessary to comply with and maintain the customer protection of the RPS rate caps.

Staff and the IPA acknowledge that the LTPPAs provide an energy price hedge for utility customers, but they contend that it has not been a good hedge, because in most months since the LTPPAs went into effect, the energy hedge price has exceeded the current wholesale price of energy.[4] Staff IB at 7; IPA IB at 7. Their position manifests a fundamental misunderstanding of the purpose of an energy hedge. The purpose of a hedge is not to ensure that the contract price is always at or below the current market price. Rather, an energy hedge is a cap on the price that

[4] The IPA states that it did not consider using the LTPPAs as price hedges, but does not dispute that the LTPPAs provide an energy price hedge for consumers. IPA IB at 7. Further, the success (or lack thereof) of the LTPPAs as an energy price hedge to date is solely a function of the accuracy (or lack thereof) of the IPA's confidential 2010 FEC which provides the energy price component of the LTPPAs.

the buyer must pay for energy under the contract. Under an energy price hedge provision, the buyer accepts that the energy hedge price in the contract will sometimes exceed the current market price, in return for a cap on the price that will be paid for energy under the contract, should actual market prices rise. RS Ex. 1.0 at 15-17. In fact, in the severely cold months of January and February 2014, when wholesale electricity prices spiked, the energy price hedge component of the LTPPAs capped the price charged to the utilities and their customers at the energy price in the 2010 FEC, preventing the customers from bearing the brunt of the high wholesale market prices in those months. IPA Ex. 1.0R at 10; Staff Ex. 1.0C at 7-8; RS IB at 11.

AIC raises a separate point about potential harm to customers under the Renewables Suppliers' primary proposal: "Assuming the costs of the LTPPAs remain higher than the current market, the higher costs incurred by eligible retail customers under the primary proposal could then lead to further switching and greater concentration of costs on an . . . ever smaller pool of eligible retail customers." AIC IB at 8. However, AIC acknowledges that "such a scenario to be relatively remote" (AIC IB at 8), and provides no quantification of the likelihood of this occurring. In fact, as shown above, for the current plan year, the energy associated with the curtailed RECs under the ComEd LTPPAs is equal to only about 2.1% of the ComEd eligible retail customer load. The energy supplied under LTPPAs is not a sufficiently large component of the total energy required to serve eligible retail customers to have the degree of price impact suggested by AIC. Further, since the Renewables Suppliers' primary proposal provides for <u>reduced</u> charges to utility customers to the extent necessary to prevent the RPS rate caps from being exceeded, it seems unlikely that the rate impact postulated by AIC would cause an upward spiral to utility customers in the manner AIC suggests.[5] RS Ex. 5.2 at 19.

ComEd asserts that "[t]he record is clear that ComEd and AIC customers have already

[5] To date, the price driver for customers to switch to ARES through municipal aggregation programs has been the costs of the higher-priced legacy supply contracts that the utilities were allowed to include in their charges to their eligible retail customers. RS Rex. 5.2 at 19.

paid a premium to the Suppliers to accept or manage this risk" of load-shifting "in the agreed-to fixed price contained in the LTPPAs," and cites Mr. Zahakaylo's testimony (ComEd Ex. 1.0) at lines 288-307 for this assertion. ComEd IB at 11. The cited testimony does not support ComEd's assertion and does not even address the topic, other than repeating that the LTPPA suppliers should have known of the risk of curtailments when they bid on the contracts (*see* §III.A below). It is correct, however, that the utilities, and therefore their customers, purchased and are paying for an energy price hedge in the LTPPAs. As noted, the upside price protection of the energy price hedge has already benefited customers in certain months and may continue to do so in the future if market prices exceed the energy hedge price. Curtailing the energy purchases associated with curtailed RECs, as occurs under the current curtailment method, inappropriately relieves customers from paying for the energy hedge on that portion of the contract.

In summary, the other parties have failed to refute the Renewables Suppliers' showing that the primary proposal will not harm utility customers and will not cause utility customers to pay amounts for renewable energy resources in excess of the statutory RPS rate caps.

As described in the Renewables Suppliers' Initial Brief, the secondary proposal does not involve any charges to the utilities' eligible retail customers. RS IB at 21-22. No party has contended that the secondary proposal would harm utility customers.

III. The Renewables Suppliers' Primary Proposal Does Not Violate the LTPPAs but Rather is Fully Consistent with and Permitted by the Terms of the LTPPAs

ComEd, Staff, and the IPA argue variously that the Renewables Suppliers knew or should have known at the time of bidding on the LTPPAs that there was a risk of curtailment of purchases under the contracts if sufficient customer load migrated from ComEd to ARES; that they knew or should have known that if the Renewable Resources Budget ("RRB") were exceeded, both purchases of RECs and purchases of energy would be curtailed; and that the Renewables Suppliers' primary proposal is not permitted by the LTPPAs. ComEd IB at 2-10; Staff IB at 5-6; IPA IB at 4-6. In the subsections below, the Renewables Suppliers address

separately the other parties' arguments about the primary proposal relating to (A) the bidding on the LTPPAs and (B) the terms of the LTPPAs.

The Renewables Suppliers' secondary proposal does not implicate the curtailment provision of the LTPPAs in any way, but rather only the pricing of curtailed RECs purchased using ACP funds, and therefore the contract-related issues discussed in this section are not applicable to the secondary proposal.

A. Information Available at the Time of Bidding on Curtailment Risk and the Understanding of the Curtailment Provision

The Renewables Suppliers have acknowledged that at the time of the December 2010 LTPPA procurement event, they were aware of the statute authorizing municipal aggregation programs (although none had yet been implemented), and that curtailments under the LTPPAs could be required to keep charges to customers within the RPS rate caps if the utilities lost enough customer load. The Renewables Suppliers have, however, pointed out that at the time of the LTPPA procurement event, they reasonably anticipated that because of the steps taken by the IPA to limit the volume and dollar amount of renewables to be procured, there was not a serious risk of curtailment due to load shifting and the RPS caps being exceeded. RS IB at 26-27.

ComEd asserts that at the time of the LTPPA procurement event, "[t]he Suppliers only had to look two states away to Ohio to see the potential impact of municipal aggregation on utility load." ComEd IB at 8. However, as Renewables Suppliers witness John Reed described, the experiences of other states, including Ohio, with municipal aggregation did not provide indications that municipal aggregation in Illinois would result in the extent of customer switching that has occurred in this State. He pointed out that a number of states have enacted laws that enable municipal aggregation, but those states have not experienced aggregation that remotely resembled what has occurred in Illinois. RS Ex. 5.2 at 10. For example:

- In California, which was opened to full retail electricity competition in 1998, to date there are only four communities served through municipal aggregation programs. *Id*. at 10.

- In Massachusetts, initial efforts at purchasing power on behalf of all customers within a municipality began in 1997, but as of today, only a small number of Massachusetts towns have initiated aggregations, many of these have not yet selected suppliers, and the volumes sold under the municipal aggregation programs are only a small portion of the state's electric load. *Id*. at 10-11.

- Energy deregulation legislation was enacted in New Jersey in 1999, but that state's first municipal aggregation programs, which affected only four communities, did not become effective until 2013. *Id.* at 11.

- With respect to Ohio, although that state commenced retail competition, including allowing municipal aggregation, in 2001, by 2007, the Ohio Consumers' Counsel reported that due to various factors, municipal aggregation had "dissipated." Further, the Ohio deregulation laws included specific provisions to incentivize customer switching from the utilities to alternative generation suppliers.[6] *Id.* at 12-13.

In contrast to ComEd's assertions, IPA Director Star testified that:

> [E]xcept for systems like in Texas (where I understand that all default customers were switched to the utility's retail affiliate and bundled service ceased to exist), my understanding is that the load shift in Illinois occurred faster and with greater magnitude than any other state. (IPA Ex. 1.0R at 11.)

Mr. Reed also cited third party sources that reported that Illinois has been the fastest growing municipal aggregation state in the nation.[7] RS Ex. 5.2 at 14.

Staff argues that the LTPPA suppliers should have taken appropriate steps in the bidding process to protect themselves against the risks of customer switching, the RRB being exceeded, and the possibility of curtailments under the LTPPAs (even if these risks were "entirely unforeseeable"). Staff IB at 5-6. As the Renewables Suppliers' pointed out in their Initial Brief in commenting on the testimony of Staff and other parties on this point, Staff does not suggest what, specifically, the LTPPA bidders should have done, other than submit higher bids. Staff IB

[6] In contending that the LTPPA bidders should have known from the Ohio experience that municipal aggregation programs would result in very high levels of customer switching from the utilities, ComEd witness Mr. Zahakaylo testified that between 2001 and 2010, several Ohio utilities had experienced customer switching levels similar to or higher than the current switching levels in Illinois. ComEd Ex. 1.0 at 10. However, the figures he cited represented the aggregate customer switching occurring in Ohio for all reasons over a 10-year period, not just the switching attributable to municipal aggregation programs. RS Ex. 5.2 at 12-13.

[7] ComEd cites a "FAQ" response posted by the Procurement Administrator stating that the RRB would vary to the extent that sales to eligible retail customers vary due to either customer migration or changes in energy prices. ComEd IB at 9. This general description of the RRB, however, provided no information as to whether there was a realistic risk of sufficient customer load migration that there could be future curtailments of the LTPPAs.

at 6; *see* RS IB at 27-28. However, the "bid higher" strategy suggested by Staff (and others) would have been severely limited by the statutory requirement that all bids, in order to be accepted, must 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.[8] 20 ILCS 3855/1-75(c)(1); 220 ILCS 5/16-111.5(e)(3); RS IB at 28. Additionally, any bidder's desire to bid higher due to perceived risks would have been constrained by the competitive nature of the procurement. RS IB at 28. Of course, given these constraints and the risks that Staff contends bidders knew or should have known of, prospective bidders could have simply decided not to participate in the LTPPA procurement event. Such decisions, however, would have defeated the statutory objective of having a competitive procurement event to secure renewable resources to meet the utilities' RPS requirements at prices determined through competitive bidding, and would not have been in the public interest.

In any event, whether the Renewables Suppliers knew or should have known at the time of bidding that there was a serious risk of curtailment of the LTPPAs due to customer load shifting (or, on the other hand, reasonably relied on the steps taken by the IPA in sizing and structuring the LTPAA procurement to avoid the risk of future curtailments) is beside the point of the Renewables Suppliers' primary proposal. The Renewables Suppliers are not complaining about the fact of curtailments due to customer load migration *per se*, nor does the primary proposal eliminate curtailments. Rather, the point of the primary proposal is that the curtailment of both RECs <u>and</u> the associated energy under the current curtailment methodology is not necessary in order to prevent the RPS rate caps from being exceeded; therefore, as permitted by

[8] The presentation slides from the September 8, 2010 bidder information meeting expressly advised the prospective bidders: "Bids that fail to meet the benchmarks established by the Procurement Administrator, the Procurement Monitor, and the IPA are eliminated." ComEd Cross Ex. 1 at 41. The same express warning is conveyed in the bidder meeting presentation slides in Mr. Zahakaylo's exhibits. ComEd Ex. 1.03 at 10; ComEd Ex. 1.06 at 39; ComEd Ex. 1.09 at 7.

the terms of the LTPPAs, the Commission should direct that curtailments be implemented by curtailing only the purchase of RECs.

ComEd asserts that at the time of the LTPPA procurement event, the bidders were informed and aware that in the event the RRB were exceeded, purchases of both RECs and the associated energy under the LTPPAs would be curtailed.[9] ComEd IB at 7-10. (The IPA makes a similar assertion but relies entirely on ComEd's evidence. IPA IB at 6.) ComEd argues that the LTPPA procurement approved by the Commission in Docket 09-0373 was for bundled RECs plus energy, and that in the pre-procurement event activities in 2010, it was made clear to the bidders that the LTPPA procurement was for a bundled product consisting of both RECs and energy. ComEd IB at 7-8. However, these are completely unremarkable observations that are uninformative on the issue at hand. Everyone knew that the LTPPA procurement the Commission approved n Docket 09-0373 as part of the 2010 IPA Procurement Plan, was for long-term contracts for RECs plus energy; that was the objective of that component of the 2010 Plan. However, the fact that the LTPPAs were to be for RECs plus energy does not by itself shed any light on the understanding of how the curtailment provision was to operate in the event the RRB were to be exceeded, or what would need to be curtailed to keep charges to utility customers within the RPS rate caps.

In fact, information provided to the bidders in the information sessions prior to the December 2010 procurement event is consistent with an understanding that in the event the RPS rate caps were exceeded, only REC purchases under the LTPPAs would be curtailed. Three of the presentation slides from the bidder information sessions included in ComEd's exhibits in this docket contain the following statement:

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[9] In response to ComEd's argument concerning "parol evidence" (ComEd IB at 5), the Renewables Suppliers state that the discussion in the remainder of this §III.A is provided to refute ComEd's argument that at the time of the December 2010 procurement event, the bidders were fully informed and aware that if the RRB were exceeded, purchases of both RECs and energy would be curtailed. This discussion is not offered as parol evidence on the meaning of the curtailment terms of the LTPPA.

- Utilities will not be liable for any costs that cannot be recovered from customers through tariffs
  - -- For example, this could occur if purchases of RECs under the contracts come to exceed budget limits in the future.[10]

Further, any inference suggested by the references ComEd cites that it was understood at the time of the LTPPA procurement event that all operations under the LTPPAs would be "bundled," *i.e.*, would affect both RECs and the associated energy in the same way, is contradicted by the record. For example, as Renewables Suppliers witness Mr. Gordon pointed out, the presentation slides from the pre-event bidder conferences included in ComEd's exhibits in this case (as well as the actual ComEd LTPPAs), provide for separate methods for handling energy shortfalls and REC shortfalls. The presentation slides also describe separate credit requirements for the REC portion and the energy portion of the contracts.[11] RS Ex. 1.2 at 8. As Mr. Gordon explained, these were "indications that RECs and the associated energy were not to be treated together for all purposes under the contracts." *Id.*

ComEd also quotes from four documents of two of the Renewables Suppliers, written around the time of the LTPPA procurement, that stated that *****BEGIN CONFIDENTIALxxxx xxxx

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amounts that would cause the RPS price caps to be exceeded – is reflected in at least sixteen places in the Renewables Suppliers' documents placed into the record by ComEd. ComEd Cross Exhibit 1 at 25, 60, 62, 63, 64 (three places), 65-66, 68, 69 (two places), 72, 74, 76, 79, 81.

The Renewables Suppliers' primary proposal is completely consistent with this contemporaneous understanding of what the LTPPAs would provide with respect to curtailments. Under the primary proposal, purchases of RECs are curtailed if and to the extent necessary to prevent the RPS rate caps and the RRB from being exceeded, based on the imputed REC prices and the Appendix K calculation procedure the Commission has approved. Under the primary proposal, the LTPPA suppliers do not receive payments pursuant to the contracts for RECs that would cause the RPS rate caps to be exceeded, because the utility is not allowed to recover, through its PUA §16-111.5(l) tariff, renewables costs that would cause the RPS rate caps to be exceeded. However, the LTPPA suppliers would continue to deliver and be paid for the energy associated with the curtailed RECs, at the 210 FEC price, since the energy contracted for under the LTPPAs has no impact on whether the RRB and the RPS rate caps are exceeded.

B. The Renewables Suppliers' Primary Proposal is Permitted By, Not Prohibited By, the Terms of the LTPPAs

The IPA and Staff argue that the Renewables Suppliers' primary proposal would require a revision to or reinterpretation of, or would constitute a renegotiation of, the LTPPAs.[12] However, the repeated assertion of this characterization by these parties does not make it true. Neither of them specifically explains how the primary proposal would require a revision to the LTPPAs. IPA IB at 3-4, 5, 6; Staff IB at 8. They both cite the fact that the Commission, in its order in Docket 12-0544 and its December Order in this docket, ruled that curtailments under the

[12] Characterizing the primary proposal as requiring a "renegotiation" of the LTPPAs is particularly inapt since, as shown below (and recognized by the parties, *see* IPA IB at 5-6, ComEd IB at 4, AIC IB at 6), under PUA §16-111.5(e)(2), the LTPPA suppliers were not allowed to "negotiate" the terms of the LTPPAs in the first place.

LTPPAs should cover both RECs and the energy associated with the curtailed RECs.[13] IPA IB at 3, 6; Staff IB at 4. However, the Renewables Suppliers understand that the purpose of this rehearing proceeding is to evaluate and determine whether the curtailment methodology previously approved by the Commission should be changed in accordance with the Renewables Suppliers' primary proposal. RS Ex. 1.2 at 2-3.

In any event, as they emphasized in their testimony and in their Initial Brief, the Renewables Suppliers are not seeking to revise, reinterpret, or renegotiate the LTPPAs, and their primary proposal does not require a revision, reinterpretation, or renegotiation of the contracts. RS Ex. 1.0 at 19-20; RS Ex. 1.2 at 7; RS Ex. 5.2 at 20-21; RS IB at 31-33. The primary proposal does not require any changes to the text of the Curtailment Provision of the LTPPA.[14] Rather, the primary proposal seeks a change in the curtailment methodology at the direction of the Commission, which is expressly permitted by the Curtailment Provision, while preserving the protection of the statutory RPS rate caps for customers and the "regulatory out" protection of the Curtailment Provision for the utilities. RS IB at 31-33.

ComEd argues that the Renewables Suppliers' primary proposal would violate the LTPPAs, and attempts to demonstrate why this is the case by specific reference to the text of the contracts. As shown below, ComEd's argument fails. Before addressing ComEd's specific argument based on the LTPPA text, the Renewables Suppliers first point out that any suggestion that the LTPPAs were the product of arms-length negotiations between the LTPPA suppliers and the utilities would be erroneous. In fact, the Commission found in the December Order that "[T]he RS is correct that the LTPPAs were not the result of arms length negotiations."

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[13] In fairness, Staff does not appear to be citing the prior orders for the proposition that the LTPPAs mandate that curtailments include both RECs and the associated energy, but rather only for the point that the Commission previously approved a curtailment procedure encompassing both RECs and the associated energy.

[14] The applicable provision of the LTPPAs is §D, Payment Obligations, in the "Confirmation" portion of the LTPPAs, which is quoted at pages 31-32 of the Renewables Suppliers' Initial Brief on Rehearing. In the following discussion, §D is sometimes referred to as the "Curtailment Provision" of the LTPPA.

December Order at 179.

ComEd attempts to create an impression that the LTPPAs were negotiated by asserting that their terms "were openly and collaboratively developed" by the IPA, its Procurement Administrator, the Procurement Monitor, Staff, the utilities and LTPPA suppliers. ComEd IB at 3-4. In fact, however, the provisions of the PUA §16-111.5(e)(2) preclude any inference that the LTPPAs were the product of arms-length negotiations between the LTPPA suppliers and the counter-party utilities:

> The procurement administrator shall make available to the Commission all written comments it receives on the contract forms, credit terms, or instruments. If the procurement administrator cannot reach agreement with the applicable electric utility as to the contract terms and conditions, the procurement administrator must notify the Commission of any disputed terms and the Commission shall resolve the dispute. The terms of the contracts shall not be subject to negotiation by winning bidders, and the bidders must agree to the terms of the contract in advance so that winning bids are selected solely on the basis of price. (220 ILCS 5/16-111.5(e)(2).)

Under this statutory provision: (1) The Commission is to receive all written comments that the Procurement Administrator receives on the contract form, but there is no requirement that the Commission do anything about those comments. (2) The Commission must resolve any disputes <u>between the electric utility</u> and the Procurement Administrator concerning the contract terms, but there is no corresponding provision for the resolution of disputes between prospective bidders and the Procurement Administrator (or the utility) concerning the contract terms. (3) Any negotiation by the winning bidders over the contract terms is expressly prohibited.

As stated succinctly by Renewables Suppliers witness Mr. DiDonato of NextEra Energy Resources, LLC ("NextEra"), "In a typical PPA for a wind facility, curtailments are a primary term for negotiation, but in Illinois, there was no meaningful opportunity to negotiate the curtailment provision in the LTPPA."[15] RS Ex. 2.1 at 1.

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[15] If the Commission finds ambiguity in the Curtailment Provision of the LTPPA, the ambiguity must be construed against the party who drafted the contract. *Duldulao v. Saint Mary of Nazareth Hosp. Ctr.*, 115 Ill. 2d 482, 493 (Ill. 1987); *In re Teichner*, 104 Ill. 2d 150, 160 (Ill. 1984); *Zwayer v. Ford Motor Credit Co.*, 279 Ill. App. 3d 906, 910 (1st Dist. 1996). That party was certainly <u>not</u> the LTPPA suppliers.

Unlike the facts of the cases cited by ComEd at page 5 of its Initial Brief, this is not a situation in which the tribunal must adjudicate a dispute over the interpretation of a contract entered into between two commercial parties who negotiated the terms of the contract at arms-length. Nor are the Renewables Suppliers contending that the Commission should interpret the Curtailment Provision in a way which is contrary to the plain and obvious meaning of its words, nor asking the Commission to "rewrite" the LTPPA provision to provide a better bargain for the LTPPA suppliers.[16] ComEd IB at 5. To the contrary, as stated in the their Initial Brief (at page 32), the Renewables Suppliers recognize that the Curtailment Provision specifies a default method for implementing curtailments, by reducing the quantity of "Product" (as defined in the LTPPA) purchased under the LTPPAs. However, the application of the default method of curtailment is conditioned by the words "Unless otherwise directed by the Illinois Commerce Commission," which provides for the Commission to direct that a curtailment be implemented in a different manner than the default method.

It is ComEd, not the Renewables Suppliers, that is ignoring the plain and obvious meaning of the words in the Curtailment Provision. ComEd attempts to slough off the significance of the phrase "Unless otherwise ordered by the Illinois Commerce Commission" by asserting that this phrase <u>only</u> authorizes the Commission to direct that a curtailment be implemented on something other than a pro rata basis across all the LTPPAs. ComEd IB at 6. This argument fails the most basic principles of contract interpretation. If the phrase were intended to be limited in its application in the way ComEd contends, it would have been placed later in the clause, so that it would have read: "Buyer shall reduce the quantity of Product purchased under all contracts for renewable energy resources allowing for pro-ration in this

[16] The Renewables Suppliers' primary proposal does not provide for a "better bargain" for the LTPPA suppliers (ComEd IB at 5) at the expense of the utility. As the Renewables Suppliers have emphasized, the curtailment method embodied in their primary proposal preserves the full "regulatory out" protection of the LTPPA for the utility and does not require it to make payments to the suppliers that the utility cannot recover through its §16-111.5(l) tariff. The primary proposal also fully preserves the protection of the RPS rate caps for the utility's eligible retail customers.

circumstance and that are effective and in force at the time by reducing proportionately, unless otherwise directed by the Illinois Commerce Commission, for each contract the Annual Contract Quantity or similar contract term . . . ." The words "Unless otherwise directed by the Illinois Commerce Commission," however, are placed at the start of clause (2) and therefore modify the entire clause "Buyer shall reduce the quantity of Product purchased under all contracts for renewable energy resources allowing 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." The inclusion and placement of the phrase "Unless otherwise directed by the . . . Commission" requires the parties to the LTPPAs to accept and implement a method other than the default method for curtailments if directed by the Commission.

For the Commission to direct the use of a different method of curtailment, such as that proposed by the Renewables Suppliers, would not be (as ComEd characterizes it, ComEd IB at 6) a modification by the Commission of a material term of the LTPPA. Rather, it would be an action taken by the Commission that is expressly provided for in the contract – to "otherwise direct" how a curtailment shall be implemented to avoid exceeding the RPS rate caps. The phrase "unless otherwise directed by the . . . Commission" is itself a material term of the LTPPAs. Further, contrary to ComEd's argument (ComEd IB at 6), adoption of the curtailment method proposed by the Renewables Suppliers would not require the Commission to redefine the contractual term "Product." Rather, the Commission would be directing the utility to curtail a component of the LTPPA other than "Product" – specifically, REC purchases – to the extent necessary to keep the RPS rate caps from being exceeded.[17]

[17] The Commission would not be acting outside the scope of its statutory authority, as ComEd suggests (ComEd IB at 6), but rather taking an action that the Curtailment Provision expressly provides for it to take. Further, in terms of the Commission's authority, although the two cases ComEd cites at page 6 are inapposite, PUA §16-111.5 gives the Commission comprehensive authority over utility procurements of supply to serve eligible retail customers, including authority to determine the terms of the contracts.

That the Curtailment Provision of the LTPPA provides for the Commission to direct how a curtailment shall be implemented is fully consistent with both the context of the contract and the specific terms and intent of the Curtailment Provision. The procurement process to acquire supply to serve the utilities' eligible retail customers, the utilities' RPS obligations, the RPS rate caps, the other terms and conditions of the procurement process, and the resulting contracts, are all creations of the IPA Act and the PUA Act (or creations of the IPA and/or the Commission pursuant to the directives in the statutes). The LTPPAs are a statutorily- and regulatorily-directed construct that the PUA specified the bidders were required to accept without "negotiations by winning bidders." It is entirely consistent with the statutory basis of the LTPPAs that they authorize the Commission to determine and direct the nature, extent, and means of implementation of a curtailment in order to stay within the RPS rate caps, and require the parties to implement the curtailment in accordance with the Commission's directions.

Further, the Curtailment Provision itself specifies:

(1) The utility is not liable to the supplier for any amounts otherwise owed to the supplier that the utility is not allowed to recover from its customers through its §16-111.5(l) tariffs.

(2) Unless otherwise required by law, statute or an order or decision of the Commission, the utility cannot refuse to pay the supplier for any Product for the sole reason that the payment could cause the RPS price caps to be exceeded – that is, in order for the utility to be authorized not to make payments to the supplier otherwise due under the contract, the Commission must determine and direct that such payments would cause the RPS rate caps to be exceeded.

(3) If the Commission determines that the utility cannot recover certain costs (because the RPS rate caps would be exceeded), then, and only then, is the utility authorized to implement a curtailment of purchases under the LTPPAs, either by using the default methodology in the Curtailment Provision, or "as otherwise directed by the . . . Commission."

Because the contractual right of the utility to curtail payments to the LTPPA suppliers to keep the RPS rate caps from being exceeded is entirely dependent on a determination by the Commission, it is therefore fully consistent with the purpose and intent of the Curtailment Provision that it specifies that the Commission may direct the manner in which a curtailment of

purchases to prevent the rate caps from being exceeded shall be implemented.

IV. The Renewables Suppliers' Proposals Are in the Public Interest

In §III.A.2 (pp 12-20) and §III.B.2 (pp. 22-23) of their Initial Brief on Rehearing, the Renewables Suppliers demonstrated that their primary proposal and secondary proposal, respectively, are in the public interest. In those sections and in §IV.B (pp. 31-34), the Renewables Suppliers anticipated and addressed a number of the arguments made by other parties concerning whether the primary proposal is in the public interest. Additional arguments on this topic advanced by the other parties in their initial briefs, and not already responded to in the Renewables Suppliers' Initial Brief, are addressed below.

In response to the testimony of Renewables Suppliers witnesses Mr. DiDonato of NextEra and Mr. Whitlock of EDP Renewables North America LLC ("EDPR") that their companies have suspended development of any further wind generation projects in Illinois due to the LTPPA curtailment situation, Staff points out that the Illinois RPS specifies a preference that the renewable resources from which the utilities' RPS obligations are satisfied be located in Illinois or an adjoining state, and that the renewable resources from which an ARES' RPS obligations are satisfied are to be located within the footprint of MISO or PJM. The IPA also cites the statutory locational preference relating to the utilities' RPS obligations. Staff IB at 9-10; IPA IB at 10. However, the current method of implementing curtailments that deprives the LTPPA suppliers of more revenue than needed to comply with the RPS rate caps has created a lack of confidence in, and uncertainty of revenues from, contracts entered into to serve Illinois' RPS requirements and the Illinois renewable energy market, regardless of the location of the renewable generation facilities. RS IB at 13, 17-18. The current method of implementing curtailments is discouraging developers and investors <u>both</u> from developing new projects in Illinois <u>and</u> from developing new projects in other states <u>to serve</u> Illinois. RS IB at 14-18.

Renewables Suppliers' witness Mr. DiDonato of NextEra testified, "[T]he fact that we

are experiencing revenue losses greater than required to satisfy the statutory [RPS] rate caps calls into question why we should develop any future projects or enter into any future contracts in Illinois." RS Ex. 2.1 at 3. Renewables Suppliers witness John Reed explained:

> Q. Will the current curtailment methodology adversely affect procurement of even out-of-state renewable resources to meet Illinois requirements?
>
> A. Yes, it will. If the current curtailment approach is maintained, then regardless of where renewable generation facilities are located, renewables developers and owners are likely to view sales of renewable energy to Illinois' energy providers as unduly risky. Developers and owners would be much less likely to contract with Illinois utilities if they perceive a reasonable likelihood that policy changes will be allowed to have a material, adverse effect on existing contracts. This risk aversion to selling into the Illinois renewables market will raise prices for renewable supplies, and will increase the cost to consumers of meeting the state's renewable energy targets. This result is clearly harmful to electric consumers, and contrary to the public interest. (RS Ex. 5.2 at 16-17.)

Further, although it is correct that projects to meet Illinois' increasing RPS requirements and demand for clean electricity can be located in other states, construction of the projects in other states deprives Illinois of the economic, employment, and environmental benefits of having the new projects developed in Illinois – a proposition with which the IPA agrees. RS IB at 19; RS Ex. 5.2 at 15-16; IPA Ex. 1.0R at 15, 17; IPA IB at 8, 10.

Staff and the IPA contend that there are other factors, in addition to the LTPPA curtailments and methodology, that could cause a renewable generation developer to decide not to locate new projects in Illinois. They cite low wholesale energy prices in Illinois, low capacity prices from the regional transmission organizations, a current "oversupply" of RECs to the Illinois market, that the RRB is currently at or near its cap limit, and that making purchases using the funds in the IPA Renewable Energy Resources Fund ("RERF") requires a parallel utility procurement. Staff IB at 10-11; IPA IB at 8-9. Renewables Suppliers witness Mr. DiDonato acknowledged these other potential factors, but stated categorically that "the key factor for my company's decision not to develop any further projects in Illinois at this time is the significant curtailments and associated revenue losses we have experienced under our current LTPPA with

ComEd." RS Ex. 2.1 at 1. He also stated that "Our company has stopped wind development activity for any new projects in Illinois, but at the same time we have continued to develop projects in other states in the Midwest over the past two years." RS Ex. 2.1 at 2. Mr. Whitlock of EDPR also acknowledged these other potential factors, but testified:

> [F]or 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. For EDPR, in the last year we have 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. All of these projects are under long-term contracts for which we have confidence in the counterparty fulfilling the expected revenue requirements. (RS Ex. 4.1 at 1.)

Renewables Suppliers' witness Mr. Thumma also explained why the existence of these other factors does not negate the significance of the revenue losses from the curtailments of the LTPPAs as a disincentive to new wind energy development to meet Illinois' RPS requirements. He emphasized that to encourage cost-effective investment in new renewable energy projects needed to meet Illinois' increasing RPS requirements, it is important that factors such as the current method of implementing curtailments to meet the RPS rate caps, which discourages entry into long-term renewables contracts, be addressed. RS Ex. 3.3 at 1-3.

Staff asserts that in Mr. Thumma's discussion of the importance of predictable long-term contract revenues to provide the lowest cost, most efficient financing of new renewable generation facilities (*see* RS IB at 13-15), he "omits additional revenue streams," specifically revenues from capacity services provided to PJM or MISO and from accelerated depreciation. Staff IB at 11. Mr. Thumma, however, did not "omit" discussion of these two items. *See* RS Ex. 3.0 at 4; RS Ex. 3.3 at 3-4. Further, he pointed out that (1) although wind farms receive capacity revenues from participating in capacity markets, wind farms are primarily energy, not capacity resources, and capacity revenues generally comprise only a small portion of a wind farm's revenue stream; and (2) while accelerated depreciation is a meaningful tax incentive that is considered in the financial analysis of a new project, it is not a source of revenue. RS Ex. 3.0 at

4; RS Ex. 3.3 at 3. Staff agrees with the latter point. Staff IB at 11. In short, the availability of capacity revenues and accelerated depreciation does not offset the need for predictable long-term revenues from energy and RECs to be able to finance new projects.

Staff asserts that the Renewables Suppliers' proposals "are inconsistent with the benefit of just and reasonable rates," but provides no support or explanation for this assertion. Staff IB at 14. However, because the Renewables Suppliers' proposals would provide for the statutory RPS rate cap that limits the costs of renewable resources to customers to continue to be met, the proposals will result in just and reasonable rates.[18] RS Ex. 5.2 at 6-7. Staff also asserts that the Renewables Suppliers have not shown how their proposals are consistent with ensuring that there is not undue discrimination in utility services. Staff IB at 16. The primary proposal, however, spreads the costs of the LTPPAs fairly well over all the utility's sales customers, so that no discrimination issues are created. The secondary proposal uses an external funding mechanism, the accumulated ACP funds, to address the revenue shortfall caused by the current curtailment method, and thereby raises no discrimination issues. RS Ex. 5.2 at 7.

Staff erroneously characterizes the Renewables Suppliers as arguing that in order to ensure that Illinois' RPS goals are met in the future, the Commission must assure renewables developers that it is "profitable" to enter into long-term contracts with Illinois utilities, must ensure that the LTPPAs are "profitable at any cost," and must "ensure the profitability of suppliers." Staff IB at 14, 15, 16. Staff's characterizations are hyperbole. The Renewables Suppliers are simply pointing out that prospective renewable energy suppliers 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); and that the current method of curtailments, which deprives the LTPPA suppliers

[18] The Renewables Suppliers' secondary proposal cannot be inconsistent with just and reasonable rates, since it does not involve or require charges to any customers, but rather only involves payments for curtailed RECs from accumulated ACP funds.

of more revenue than is necessary to comply with the RPS rate caps, creates precisely the type of uncertainties that need to be avoided. RS Ex. 5.2 at 17-18. The Renewables Suppliers are not arguing that the Commission needs to "ensure profitability" for renewables suppliers, but rather only that suppliers need reasonable certainty and predictability that they will receive the revenues they contract to receive in return for supplying renewable resources to meet Illinois' RPS requirements. It is up to the individual renewable generation developer or supplier to construct and operate its projects at costs that will make them profitable based on the contracted revenues. If a developer or supplier cannot construct and operate its projects at costs levels that, based on the revenue levels contracted for, enable it to recover the investment and earn a return, neither the Commission nor the State is obligated to maintain the developer's profitability.

In response to the Renewables Suppliers' demonstration that continued development of renewable generation projects in Illinois will provide significant economic and employment benefits for the State, Staff quibbles that an academic article cited by Renewables Suppliers' witness Mr. Reed indicates that some other alternative energy technologies, such as landfill gas and energy efficiency projects, may produce higher numbers of job-years per unit of energy output than wind generation projects. Staff IB at 17. However, the study supports the Renewables Suppliers' position that continued development of new renewable generation projects in Illinois (which the Renewables Suppliers proposals will do) will provide economic and employment benefits to the State and is in the public interest.[19] RS Ex. 5.2 at 15-16. The article states, "An increasing number of studies are finding that greater use of renewable energy (RE) systems and energy efficiency provides economic benefits through job creation, while at the same time protecting the economy from political and economic risks associated with over-reliance on a limited suite of energy technologies and fuels;" and "[a]ggressive EE [energy

[19] In focusing on the economic and employment benefits to Illinois of continued in-State development of wind and solar generation projects, the Renewables Suppliers are not suggesting that other areas of development, such as energy efficiency initiatives, should not be pursued as well.

efficiency] measures combined with a 30% RPS target in 2030 can generate over 4 million full-time-equivalent job-years by 2030."[20] RS Cross Ex. Zuraski-1 at 1.

The IPA argues that not curtailing the energy component of the LTPPAs would not increase the environmental benefits of the LTPPA suppliers' facilities, because the environmental benefits are captured by the RECs. IPA IB at 4, 11. The IPA misapprehends the environmental benefits of the Renewables Suppliers' proposal. Adopting the primary or secondary proposal will increase certainty that revenues contracted for under the LTPPAs will be received by the suppliers and will eliminate the current disincentive to development of new renewable generation facilities in Illinois, and in nearby states to serve Illinois. This will lead to environmental benefits as new renewables facilities are developed and placed into service.

The IPA contends that the Renewables Suppliers' primary proposal is inconsistent with the legislatively-mandated requirements of the IPA procurement process, which the IPA states could harm eligible retail customers by adding uncertainty to future procurements. IPA IB at 4. The IPA does not explain how the primary proposal is inconsistent with the legislatively-mandated requirements of the IPA procurement process. However, adoption of the primary proposal will not add uncertainty to future procurements. Rather, it will reduce uncertainty in future procurements. Prospective suppliers will be able to approach future procurements with confidence that if they are awarded a contract, there will be certainty as to the receipt of the contracted revenues. Prospective suppliers will not see a need to bid higher prices, including additional "risk premiums" (which may result in bids exceeding the competitive pricing benchmarks), or decide not to participate because the process is too risky and unpredictable. The outcomes produced by adoption of the primary proposal will benefit, not harm, eligible retail customers. RS IB at 12, 13, 15, 17, 18-19.

[20] As noted by Staff, the article reports that the highest value of job-years per unit of energy output is produced by solar projects. Staff IB at 17. The renewables projects whose output is contracted under the LTPPAs include a solar generation facility owned by an affiliate of Invenergy, which was financed specifically on the basis of its LTPPA with ComEd. RS Ex. 1.0 at 3, 19.

V. Other Issues Raised by Other Parties

AIC suggests that the primary proposal may be inconsistent with the statutory requirements for benchmarking on prices paid for energy and the use of sealed bids for selection of contracts based on price. AIC IB at 8. The Renewables Suppliers do not see a basis for this concern. The LTPPAs were bid and awarded on the basis of a single Contract Price submitted by each bidder, and the primary proposal does not require the Contract Price of any LTPPA to be exceeded. Further, the primary proposal is directly tied to the values used by the IPA to benchmark the original bids, namely, the energy prices in the IPA's 2010 FEC and the imputed REC price. The primary proposal provides for the energy associated with curtailed RECs to be purchased at the applicable year's price from the 2010 FEC that was used by the IPA for benchmarking purposes. The price paid for the energy associated with the curtailed RECs will be the same price paid under the LTPPAs for the energy associated with non-curtailed RECs.

The IPA, in discussing the Renewables Suppliers' secondary proposal, states that it would not be able to use the RERF to purchase curtailed RECs at the price specified in the secondary proposal (Contract Price less DAH-LMP) because "[t]he RERF has a cost cap of the imputed REC price." IPA IB at 12. The Renewables Suppliers acknowledge that the Commission does not have authority to direct the IPA as to how to spend the RERF. RS IB at 25. However, the Renewables Suppliers' point out that under the secondary proposal, the Contract Price less the applicable DAH-LMPs becomes the imputed REC price for the purchase of curtailed RECs. Further, the imputed REC price, as referred to by the IPA, is a calculation of the IPA's own creation outside the four corners of the contracts. The only explicit price term in each LTPPA is its Contract Price that was bid and accepted in the original utility procurement. The secondary proposal would not require the IPA to purchase curtailed RECs at prices in excess of the Contract Price (*i.e.*, even if the DAH-LMP for an hour were zero, the price of the curtailed RECs generated in that hour would be the Contract Price).

VI. 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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