STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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

STAFF OF THE ILLINOIS COMMERCE COMMISSION

REPLY BRIEF ON REHEARING

_____

JESSICA L. CARDONI
JOHN C. FEELEY
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jcardoni@icc.illinois.gov
jfeeley@icc.illinois.gov

Counsel for the Staff of the Illinois Commerce Commission

May 2, 2014

Table of Contents

Page

I. ARGUMENT 1
A. The Renewable Suppliers' primary proposal does not preserve the customer protections of the statutory RPS rate caps 1
B. The Renewable Suppliers' primary proposal is not in the public interest. 4
II. CONCLUSION 8

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

STAFF OF THE ILLINOIS COMMERCE COMMISSION
REPLY BRIEF ON REHEARING

The Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, and pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission") Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief on Rehearing in the above-captioned matter. This Reply Brief on Rehearing will respond to the Initial Briefs on Rehearing ("IBs") of some parties. The absence of a Staff response to positions or arguments contained in an IB of a party should not be construed as agreement with those positions or arguments.

I. ARGUMENT

A. The Renewable Suppliers' primary proposal does not preserve the customer protections of the statutory RPS rate caps

The Renewable Suppliers ("RS") assert that their "primary proposal preserves the customer protections of the statutory RPS rate caps." (RS IB, 2.) The Renewable Suppliers base their conclusion on the premise that 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." *Id*. However, this is incorrect. The statute requires the Commission to prevent rate increases -- due to purchases of renewable energy resources – in excess of 2.015% of the amount paid per kwh for electricity service during the planning year ending 5/31/2007. (Illinois Power Agency, ICC Order Docket No. 09-0373, 41 (December 28, 2009). That is the only "appropriate comparison" that can be relevant in this instance. If the Renewable Suppliers' primary proposal is accepted, and if actual Day-Ahead Hourly Locational Marginal Prices in the load zone applicable to the Long-Term power purchase agreements ("LTPPAs") remain below the 2010 forward curve (as appears most likely), then ratepayers will experience a rate increase in excess of the 2.015% cap. (IPA IB, 7; ComEd IB, 11; Ameren IB, 2; Staff IB, 4.) That is an unalterable mathematical fact.

The Renewable Suppliers' assert that customers pay less under the current method than they would under the Renewable 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 IB, 2.) Again, the Renewable Suppliers are incorrect. If, as the Renewable Suppliers seem to believe, the actual Day-Ahead Hourly Locational Marginal Prices in the load zone applicable to the LTPPAs constitute a more proper dividing line for determining where the cost of energy ends and the cost of RECs begins, then the curtailments needed to prevent ratepayers from experiencing a rate increase in excess of the 2.015% cap would be ***above*** (not below) the curtailments contemplated by the Commission-approved Appendix K of the 2010 IPA plan. (Illinois Power Agency, ICC Order Docket No. 09-0373, (December 28, 2009) Appendix K, 2-3.)

The Renewable Suppliers want the size of the bundled product curtailments to be based on the ***highest*** value of market energy prices as possible, since this deflates the implicit cost of RECs and leads to a smaller curtailment. At the same time, they want the payment for any unbundled energy still purchased to be settled at the ***lowest*** value of market energy prices as possible, since this maximizes their revenues from those unbundled energy sales. As they admit in their testimony and brief, the end result is the Renewable Suppliers are made "whole." (Staff IB, 12; RS Ex, 4.0, 4; RS IB, 12-13.) Inescapably, that means that ratepayers pay the same amount that they would have paid had there been no curtailments. (Staff IB, 7.) Effectively, there ***are*** no curtailments under the Renewable Suppliers' primary proposal. Thus, ratepayers experience the same rate increase, in excess of 2.015%, as if there were no curtailment clause in the LTPPAs. (Illinois Power Agency, ICC Order Docket No. 09-0373, (December 28, 2009) Appendix K to IPA's 2010 – 2014 Plan, 2-3.)[1] Yet, somehow the Renewable Suppliers expect the Commission to believe that ratepayers are not harmed and still protected by the statutory RPS rate caps. In short, the Renewable Suppliers' position does not add up.

In fact, under the Renewable Suppliers' primary proposal, not only do ratepayers spend in excess of 2.015% due to these contracts, the Renewable Suppliers retain all the curtailed RECs and would be free to market them elsewhere. In essence, ratepayers would be paying something for nothing. Surprisingly, the Renewable Suppliers actually argue that, since ratepayers would not be ***receiving*** RECs, they could not be paying in excess of 2.015% ***for RECs***, and that therefore the spending cap associated with the Illinois RPS would not be exceeded. (RS IB, 8-9.) This is a new twist on a "rose by any other name," except this one does not smell as sweet. By the same flawed logic, if 100%

[1] Appendix K to the IPA 2010 – 2014 Plan is attached to the IPA's November 9, 2009 Motion.

of the RECs were curtailed, but, pursuant to the RS primary proposal, none of the energy was curtailed, the premium above market prices for that energy would deplete none of the utility's renewable energy resource budget.

Commonwealth Edison Company ("ComEd"), Ameren Illinois Company ("Ameren"), the Illinois Power Agency ("IPA"), and Staff all disagree with the Renewable Suppliers with respect to the harm that the proposal will do to eligible retail customers. In fact, Ameren cautions that:

> [T]he problem could become worse in the future, as Mr. McCartney explains the advent of municipal aggregation has resulted in the majority of customers switching away from utility bundled supply which leaves the cost responsibility for the LTTPAs with the eligible retail customers that remain. 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." (Ameren Ex. 1.0 (RH), pp. 4-5).

(Ameren IB, 8.)

Based upon the above arguments and those set forth in Staff's previously filed comments, testimony and briefs, RS's proposal does not preserve the customer protections of the statutory RPS rate caps and should be rejected.

B. The Renewable Suppliers' primary proposal is not in the public interest.

The Renewable Suppliers argue that its "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." (RS IB, 12.) However, the "public interest" is not measured by the confidence levels of renewable energy developers and investors. The IPA Act and PUA contain many competing goals

and requirements. (IPA IB, 8, 10, 13; Staff IB, 10.) Wind farm development within Illinois is not a sacrosanct position among those competing goals and requirements in the IPA Act and PUA.

Furthermore, the Renewable Suppliers' primary proposal is contrary to the public interest in several respects. For example, ComEd argues that the RS proposal:

> would simply shift the risk of current and future load shifting from the Suppliers – who willingly accepted such risk – to ComEd and AIC-supplied customers. This is not just an extra layer of cost not appropriately borne by retail customers, it is imposing an added layer of cost on those customers for a risk they have already paid once to have the Suppliers bear. The record is clear that ComEd and AIC customers have already paid a premium to the Suppliers to accept or manage this risk in the agreed-to fixed price contained in the LTPPAs.

(ComEd IB, 10-11.)

ComEd also argues that "[t]he Suppliers' primary proposal also makes bad business sense as it cuts against the integrity of the contracting process in Illinois procurements." (*Id.*, at 11.) The IPA elaborates on this issue, stating that the Renewable Suppliers' proposal "would be contrary to the Public Utilities Act mandate for IPA procurements on behalf of eligible retail customers," specifically citing the "clear requirement … that all disputes on contractual terms must be resolved by the Commission before winning bidders sign the contracts, after which 'the contracts shall not be subject to negotiation' and 'the bidders must agree to the terms of the contract in advance.'" (IPA IB, 5, quoting from 220 ILCS 5/16-111.5(e)(2).)

The Renewable Suppliers also claim that their proposal is in the public interest because it will spur construction and operation of renewable generation projects in Illinois, which "can produce significant economic development benefits for the State and

for the localities in which the plants are constructed." (RS IB, 19.) The IPA, however, raises serious doubt about the Renewable Suppliers' theory. According to the IPA,

> [T]he most important reasons that little renewable development occurred in Illinois in 2013 and several RS witnesses averred that they are no longer interested in building in Illinois right now are:
>
> - The Illinois REC market is "oversupplied" with low cost wind RECs (from Illinois and other qualifying states)
> - The Renewable Resources Budget anticipated to be at or near its cap for the next several years for both utilities, and
> - The Renewable Resources Fund requiring a parallel utility procurement.
>
> (See, e.g., RS Ex. 3.2 at 2; IPA Ex. 1.0R at 15:320-327; Ameren and ComEd March 2014 Load Forecasts (cited in note 1 supra); 20 ILCS 3855/1-56(c) and (d).) These are all significant challenges that will not be resolved by rewriting the LTPPAs. The IPA further notes that if a developer managed to secure a long-term contract with an entity in this climate (i.e. when there are no funds available under the Renewable Resources Budget and the Renewable Energy Resources Fund cannot be spent), it would not be IPA procured, and thus subject to arms-length negotiated curtailment provisions.

(IPA IB, 8-9.)

The Renewable Suppliers also point to the environmental benefits of renewable energy. (RS IB, 18.) While Staff does not dispute that some forms of renewable energy production may be more benign to the environment than some forms of non-renewable energy production, the Renewable Suppliers have shown no clear link between its proposals and the attainment of these environmental benefits. As just discussed, the IPA raises significant reasons, independent of the LTPPAs, for the recent wane in interest for renewable energy projects in Illinois. In any event, the General Assembly clearly did not intend to give the Commission *carte blanche* to pursue the environmental benefits of renewable energy, as evidenced by the 2.015% rate increase cap.

The Renewable Suppliers also maintain that long-term supply contracts will produce lower RPS compliance costs, thereby benefitting electricity consumers. (RS IB, 19.) However, Staff questions this theory and notes that "With respect to cost, so far, the experience of ComEd and Ameren has been that 1-year contracts for unbundled RECs have been less expensive than the LTPPAs." (Staff IB, 11; Staff Ex. 1.0 C, 16.) Apparently, ARES also find short-run contracting for RECs to be less expensive. (RS Ex. 3.0, 8.) The IPA's explanation for this seems to be that "The Illinois REC market is 'oversupplied' with low cost wind RECs (from Illinois and other qualifying states)." (IPA IB, 9.)

Based upon the above arguments and those set forth in Staff's previously filed comments, testimony and briefs, RS's proposal is not in the public interest and should be rejected.

II. CONCLUSION

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

Respectfully submitted,

_____

JESSICA L. CARDONI
JOHN C. FEELEY
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jcardoni@icc.illinois.gov
jfeeley@icc.illinois.gov

Counsel for the Staff of the
Illinois Commerce Commission

May 2, 2014