

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

STAFF OF THE ILLINOIS COMMERCE COMMISSION
REPLY BRIEF ON EXCEPTIONS ON REHEARING

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**STAFF OF THE ILLINOIS COMMERCE COMMISSION
REPLY BRIEF ON EXCEPTIONS ON REHEARING**

The Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, and pursuant to the schedule established by the Administrative Law Judge ("ALJ"), respectfully submits its Reply Brief on Exceptions ("RBOE") in the above-captioned matter.

Briefs on exceptions ("BOEs") to the ALJ's Proposed Order ("ALJPO") were filed on May 23, 2014 by the Renewables Suppliers ("RS"), the Illinois Power Agency ("IPA"), Commonwealth Edison Company ("ComEd"), and Ameren Illinois Company ("AIC"). Staff replies to the some of the positions or arguments made in BOE's of the RS, IPA, ComEd, and AIC. Staff's failure to address other positions or arguments that were contained in the BOEs of the parties should not be construed as agreement with those positions or arguments.

I. ARGUMENT

A. Response to RS

1. The RS' Primary Proposal would constitute a modification to the LTPPAs

The RS take exception to the ALJPO's rejection of the RS' primary proposal. The RS 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 renewable portfolio standard ("RPS") statutory rate caps, only purchases of renewable energy credits ("RECs") under the LTPPAs should be curtailed, and the utilities should continue to settle the energy associated with the curtailed REC 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. (ALJPO, 2-3; RS BOE, 1.) The ALJPO correctly found that the RS' primary proposal would constitute a modification to the terms of the LTPPAs. (ALJPO, 53) The RS argue that it would not. (RS BOE, 8-10.) The RS argue that the primary proposal is consistent with and permitted by the terms of the LTPPA. (Id. at 9.) The RS' argument should be rejected.

The ALJPO correctly found that the curtailment provisions of the LTPPA explicitly called for the possible curtailment of "Product" purchased under the LTPPAs, and it was clear that the definition of "Product" explicitly includes both energy and the associated RECs. (ALJPO, 53.) Staff agrees with the ALJPO's conclusion on that point. In addition, not only did the LTPAA define the product to include both the energy and the associated RECs and therefore the primary proposal would cause a modification of the terms of the

LTPPAs as the ALJPO found, it would also be inconsistent with Appendix K to the IPA's 2010 Plan which the Commission approved in Docket No 09-0373. Appendix K to the IPA's 2010 Plan (See, Attachment A), which the LTPPA's terms were based upon, called for the product in the LTPPAs to include not only the RECs but also the energy.

Product Definition. All resources that qualify as renewable energy resources under Section 1-10 of the IPA Act are eligible to submit offers in this procurement event. Sellers will specify an annual target Contract Quantity for energy plus the associated RECs that are expected to be provided on average in each delivery year (June through the following May). Seller will identify the specific generating unit or units that will be the source of the renewable energy and RECs. Capacity is not part of the product being purchased and will be discussed later. The seller's price must include and take into account any relevant transmission interconnection costs as well as the scheduled lead times to accomplish any required transmission interconnection work.

* * *

Bundled. The IPA procurement process will be on a bundled basis, for both the energy generated from the project as well as the RECs generated from the project.

* * *

(Illinois Power Agency, ICC Order Docket No. 09-0373, (December 28, 2009) Appendix K¹, 4 and 7.) (Emphasis added.)

Given that the adoption of the RS' primary proposal would be a modification to the LTPPA as the ALJPO correctly found and also would be inconsistent with Appendix K to the IPA's 2010 Plan as Staff argued in its RBOE in the initial phase of this proceeding (Staff RBOE, 3, filed December 2, 2013), the RS' primary proposal and exception on this issue should be rejected.

¹ Appendix K to the IPA 2010 – 2014 Plan is attached to the IPA's November 9, 2009 Motion in Docket No. 09-0373 and is attached to this RBOE as Attachment A.

2. The RS' Primary Proposal would harm customers

The RS argue that their primary proposal will not harm customers because under their primary proposal, customers will receive the full protection of the statutory renewable portfolio standard (“RPS”) rate caps. (RS BOE, 3.) Staff addressed this issue in its Reply Brief on Rehearing. The RS base their conclusion on the premise that the “appropriate comparison for determining whether utility customers are harmed by the RS’ 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.” (RS IB, 2.) 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 May 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. (Staff RB, 1-2.)

The RS’ assert that customers pay less under the current method than they would under the RS’ 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 RS are incorrect. If, as the RS 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; Staff RB, 2.)

The RS 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 RS 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 RS’ 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.) Yet, somehow the Renewable Suppliers expect the Commission to believe that ratepayers are not harmed and still protected by the statutory RPS rate caps. (Staff RB, 3.)

Based upon the above arguments and those set forth in Staff’s previously filed comments, testimony and briefs, RS’ primary proposal does not preserve the customer

protections of the statutory RPS rate caps and therefore harms rate payers and should be rejected.

3. The RS' Primary Proposal is not in the Public Interest

The RS's argue that their primary proposal is in the public interest. RS argues that it will restore confidence of renewable energy developers and investors in Illinois and nearby surrounding states. (RS BOE, 3-4.) Staff addressed this argument in detail in its Reply Brief on Rehearing and will not repeat those arguments here. (See Staff RB, 4-7.) RS' exception on this issue should be rejected for the reasons set forth in Staff's Reply Brief on Rehearing.

B. Response to IPA

The IPA took no exception to the substantive conclusions reached in the ALJPO. (IPA BOE, 1). The IPA did have two minor corrections regarding the references to energy efficiency on pages 51 and 54 of the ALJPO. Staff proposed similar language changes to the ALJPO. Staff is indifferent as to whether its proposed language changes are adopted or the IPA's changes are adopted.

C. Response to ComEd

ComEd takes no exception to the ALJPO's acceptance of the "pricing component" of the RS's secondary, alternative proposal. ComEd also takes no exception to the ALJPO's directive that purchases pursuant to that alternative proposal shall be limited to those that can be made with ACP funds already collected by ComEd and Ameren. However, ComEd takes exception to three "implementation details" in the ALJPO-modified alternative proposal: (1) the ALJPO's directive to allocate ACP funds based on the ratio of each supplier's Annual Contract Quantity to the total of all suppliers' Annual

Contract Quantities; (2) potential ambiguity in the ALJPO concerning purchases by the IPA with money withdrawn from the RERF; and (3) potential ambiguity in the ALJPO concerning the frequency of settlements. (ComEd BOE, 3-5.) For reasons described below, Staff supports ComEd's proposed amendments to the Order to address the first two of these three exceptions. Staff takes no position with respect to ComEd's third exception.

With respect to the ALJPO's directive to allocate ACP funds based on the ratio of each supplier's Annual Contract Quantity to the total of all suppliers' Annual Contract Quantities, Staff notes that this would be a departure from the Commission's previous direction. That is, the Commission previously ordered curtailment of the LTPPA's to be on a pro-rata basis, and that repurchases of unbundled RECs with hourly ACP funds utilize supplier-specific prices. (Illinois Power Agency, ICC Order Docket No. 12-0544, 114-115 (December 19, 2012) In effect, this meant that the dollars spent on repurchases of unbundled RECs would be proportional, not to each supplier's Annual Contract Quantity, but to the product of each supplier's Annual Contract Quantity and that supplier's contract price. Also, ComEd is correct that preserving this method of allocating available funds would continue to reflect the preferences that, pursuant to statute and Commission order, were previously given to solar photovoltaic resources relative to other types of renewable resources.

With respect to potential ambiguity in the ALJPO concerning purchases by the IPA with money withdrawn from the RERF, the Commission, after considerable debate, previously concluded that:

[I]t is clear the Commission has no authority over disbursements from the RERF collected on behalf of ARES customers.

(Id. at 113.) It is also clear that the ALJPO does not seek to reverse the Commission's previous decision. Nevertheless, to eliminate any ambiguity, Staff recommends that the Commission accept the modifications proposed by ComEd with regard to this issue.

With respect to potential ambiguity in the ALJPO concerning the frequency of settlements (ComEd BOE, 4-5), Staff takes no position, but notes as follows. ComEd is correct that previously-adopted standard REC contracts provide for quarterly delivery due dates and quarterly billing, rather than a monthly settlement process. Such contract provisions were developed by procurement administrators rather than by explicit Commission direction.

D. Response to AIC

AIC seeks clarification of the ALJPO that ACP funds should be segregated between ComEd and AIC. In other words, it is AIC's understanding that ACP funds are not to be pooled between suppliers of ComEd and suppliers of AIC. (AIC BOE, 1.) AIC wants the final order to be clear that funds from a utility that does not have to be curtailed are not used to make whole the renewable suppliers of a utility that has curtailments. Id. Staff has the same understanding as AIC that there is to be no pooling of the ACP funds between ComEd and AIC. Accordingly, Staff does not object to AIC's proposed alternative language. (Id. at 2.)

II. CONCLUSION

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

Respectfully submitted,

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June 2, 2014

*Counsel for the Staff of the
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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	:	
	:	
	:	Docket No. 09-0373
Petition for Approval of Initial Procurement Plan	:	
	:	

**THE ILLINOIS POWER AGENCY’S
MOTION FOR LEAVE TO FILE SUPPLEMENTAL RECOMMENDATIONS
FOR THE PROCUREMENT PLAN**

The Illinois Power Agency (“IPA”), pursuant to Section 200.190 of the Commission’s Rules of Practice, 83 Ill.Adm.Code § 200.190, hereby requests leave to file *instanter* its proposed supplemental recommendations to the September 30, 2009 Procurement Plan (“Plan”) filed with the Illinois Commerce Commission (“Commission”). This supplement is intended to clarify and provide additional detail regarding the conflicting issues surrounding the proposal to procure long-term renewable resources. The IPA states as follows in support of this Motion.

1. On September 30, 2009, the IPA filed its Plan to procure energy supplies for the 2010-2014 planning years. In the Plan, the IPA proposed to procure long-term renewable resources as a hedge against carbon risk.

2. On October 5, 2009, parties to the proceeding filed their objections to the Plan. Commonwealth Edison Company (“ComEd”), Ameren Illinois Utilities (“Ameren”) and the Staff of the Commission all raised objections to an alleged lack of details concerning the proposal to procure long-term renewable resources.

3. On October 16, 2009, the IPA filed a response to these objections in which the IPA provided many more details concerning the proposal to procure long-term renewable resources.

4. On October 26, 2009, the parties to this proceeding submitted replies to the IPA's response. The replies submitted by ComEd, Ameren and the Staff raised continuing concerns with the IPA's proposal to procure renewable resources.

5. Also on October 26, 2009, ComEd filed a Motion for Reconsideration and to Hold Limited Hearings. In this motion, ComEd requested further hearings to address, among other things, the issues that ComEd and other parties had raised regarding the proposal to procure long-term renewable resources.

6. The attached document supplements and modifies the IPA's prior proposal to procure long-term renewables in a way that is intended to address the concerns identified by Commission Staff, ComEd, Ameren and the Attorney General. In general, the attached document would do the following:

a.. Makes clear that prices for the long-term power purchase agreements ("PPAs") will be set through the IPA's competitive RFP process, where the contract terms will be standardized and winning bids will be selected on the basis of price alone.

b. The procurement process for Long-Term PPAs, on a stand-alone basis, will be designed and conducted in accordance with Section 16-111.5 of the Public Utilities Act and Section 1-75 of the Illinois Power Agency Act and the preferences set forth in Section 1-75(c) of the Illinois Power Agency Act shall be applied to the selection process (*e.g.*, "[t]o the extent it is available, at least 75% of the renewable energy resources . . . shall come from wind generation;" it shall be "cost-effective" as defined in that Section; the locational preferences shall be applied as set forth in that Section). 20 ILCS 3855/1-75(c).

c. The REC portion of the procurement will count toward the RPS requirements and bill-impact cap set forth in Section 1-75(c) of the Illinois Power Agency Act. *Id.*

- d. The PPAs will be standardized to allow for direct comparison of the bids on the basis of price alone. Renewable suppliers will have an opportunity to offer an annual target fixed quantity of energy and RECs. While some flexibility is included in the timing of certain delivery requirements, recognizing year-to-year and intra-annual variability of renewable resources, the PPAs will: (1) provide for reasonable minimum deliveries of energy and RECs, as a percentage of the target annual fixed quantity, on both a rolling 2-year basis and over the contract term; (2) provide for reasonable collateral to cover damages to the extent such minimums are not met; and (3) make clear that over the life of the contracts, the utilities will be obligated to purchase no more than the amount of energy and RECs equal to the annual quantity times 20 (years) at the contract price.
- e. The terms of the PPAs will allow for the delivery of energy through a fixed for floating financial swap. The fixed price for the swap will be the full bundled contract price for the renewable PPA. The floating price will be the Locational Marginal Price (“LMP”) at the utility’s load zone for each hour in the day-ahead market of the applicable Regional Transmission Organization.
- f. All resources that qualify as renewable energy resources under Section 1-10 of the Illinois Power Agency Act are eligible to submit offers in this procurement event.
- g. In accordance with the authorization granted to ComEd and Ameren under 220 ILCS 5/16-111.5(1), the utilities will recover the costs of purchasing the quantity of annual energy and RECs specified in the Long-Term PPAs.
- h. The sellers of renewable energy will be required to commit a minimum quantity of energy and RECs to the utilities, while having some flexibility in managing their deliveries in order to limit the risk premium.
7. The details of the proposed supplement to the long term renewable proposal are set forth in the attached exhibit, which is intended to replace the IPA’s proposed terms for the acquisition of long-term renewables in the September 30, 2009 Plan, and as described in greater detail in the IPA’s response to objections. For convenience and for clarity, the IPA recommends that the Commission adopt the attached exhibit as “Appendix K” to the Plan adopted by the Commission.
8. If the Commission approves Appendix K to the Plan, certain sections of the Plan will need to be revised to be consistent with Appendix K. The IPA will make

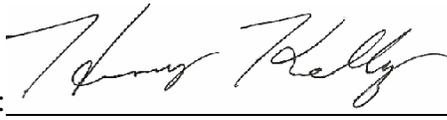
those necessary revisions in a compliance filing with the Commission after the Commission has entered a final order in this matter.

WHEREFORE, the IPA respectfully requests that the Commission grant the IPA leave to file these comments, and that the Commission accept as a supplement to the Plan the attached Appendix K.

Dated: November 9, 2009

Respectfully submitted,

Illinois Power Agency

By: _____

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	:	
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APPENDIX K

Long-Term Renewable Resources

In support of the goals outlined in the Illinois Power Agency Act, and in response to comments filed by various interveners in this proceeding¹, the Illinois Power Agency (“IPA”) intends to solicit bids for long-term power purchase agreements (“Long-Term PPAs”) to procure renewable energy. As discussed in the IPA Procurement Plan (“Plan”), the purpose of this solicitation is to protect Commonwealth Edison Company (“ComEd”) and the Ameren Illinois Utility (“Ameren”) customers from price risk associated with federal carbon controls.² Having considered all of the parties’ comments³, the IPA concludes that the Plan contains sufficient information to enable this process and provides the following additional information in the form of an appendix (“Appendix K”) to the Plan.

This Appendix K sets forth the framework under which the IPA plans to procure Long-Term PPAs for renewable resources, as well as providing further detail, requested by the parties, regarding the contract terms and conditions for these PPAs.

SUMMARY

The Long-Term PPAs will represent a small portion of the overall portfolio, currently estimated at approximately 3.5%. The Long-Term PPAs will provide price certainty for acquiring long-term renewable energy and Renewable Energy Credits (“RECs”), which will assist the IPA in partially meeting the Illinois Renewable Portfolio Standard (“RPS”) requirements for ComEd and Ameren.

LEGAL AUTHORITY

The Illinois Power Agency has broad authority to meet the electricity procurement needs of the State through a variety of means in order to ensure the maximum benefit to the citizens of Illinois. The IPA has elected for this year’s Plan to solicit bids for Long-Term PPAs to procure renewable energy under and in compliance with the terms of the RPS established by Section 1-75(c) of the IPA Act. The IPA, however, notes that Long-Term PPAs for renewable energy are also permissible under Section 16-111.5 of the Public Utilities Act, if such procurements comply with the terms and conditions specified therein.

¹ See generally comments of the People of the State of Illinois (pp. 5-8), the Environmental Law and Policy Center and the Illinois Wind Energy Association.

² On June 26, 2009, the U.S. House of Representatives passed HR 2454, the Clean Energy and Security Act of 2009, which would limit the emission of greenhouse gases from stationary sources. The U.S. Senate is currently considering the Clean Energy Jobs & American Power Act (S. 1733), which contains similar provisions.

³ Objections to Long-Term PPAs were filed by Ameren pp. 1-7, Commonwealth Edison Company pp. 6-10, Illinois Commerce Commission Staff pp. 10-18.

Long-Term Renewable Resources

PROCUREMENT PLAN

The IPA will solicit bids for twenty-year PPAs to purchase up to two million MWhs of renewable energy and the associated RECs each year. This will result in a total of 40 million MWhs of renewable energy purchased through the Long-Term PPAs over their twenty-year lives. This amount represents less than 4% of the IPA total expected energy requirements in the 2012 planning period. Having considered the need to hedge carbon risk, the opportunity to capture consumer benefits by procuring Long-Term PPAs at a time when unprecedented federal and State incentives are available to renewable energy producers, and the potential uncertainties associated with variable generation and interconnection costs, the IPA finds that two million MWh is the appropriate near-term target for this planning cycle. The two million MWhs will be split between the Ameren and ComEd service territories:

- Ameren: 600,000 MWhs each year for the life of the PPA.
- ComEd: 1,400,000 MWhs each year for the life of the PPA.

PREQUALIFICATION PROCESS

The Procurement Administrator, in consultation with the IPA, the ICC Staff, the Procurement Monitor, and the utilities will perform a pre-qualification process with eligible bidders, open to both existing renewable energy projects not under long-term power purchase agreements and renewable energy projects under development that have completed appropriate development and interconnection milestones. The IPA will keep all responses and conclusions confidential to promote competition.

PROCUREMENT PROCESS

Prices will be set through the IPA's competitive RFP process, where the contract terms will be standardized and winning bids will be selected on the basis of price alone. The procurement process for Long-Term PPAs, on a stand-alone basis, will be designed and conducted in accordance with Section 16-111.5 of the Public Utilities Act and Section 1-75 of the IPA Act and the preferences set forth in Section 1-75(c) of the IPA Act shall be applied to the selection process (*e.g.*, “[t]o the extent it is available, at least 75% of the renewable energy resources . . . shall come from wind generation;” it shall be “cost-effective” as defined in that Section; the locational preferences shall be applied as set forth in that Section).

- **Benchmarks.** The Procurement Administrator, in consultation with the IPA, the Procurement Monitor, and the ICC Staff shall develop confidential benchmarks to protect consumers that will be approved by the ICC for the resources procured under this solicitation. The benchmarks will be used to evaluate bids and to reject bids that exceed the benchmarks.
- **Application to the RPS.** The IPA intends to count the REC portion of the procurement toward the RPS requirements and bill-impact cap. To quantify the annual cost of the RECs for the purpose of the RPS, the Procurement Administrator, in consultation with

Long-Term Renewable Resources

the IPA, ICC Staff, and the Procurement Monitor shall develop a confidential 20 year forward price curve for energy at the load zone, including the estimated magnitude and timing of the price effects related to federal carbon controls. Each forward curve shall contain a specific value of the forecasted market price of electricity for each annual delivery year of the contract. In every delivery year, the imputed REC component of expenditures under the bundled renewable contracts will be determined as the difference between the expected annual contract expenditures for that year (based on the winning target Contract Quantities and Contract Prices) and the total target Contract Quantities times the forward price curve for each respective load zone for that year. For purposes of determining the maximum expenditure allowed under the RPS bill-impact cap, the forward price curve values will be fixed over the life of the contracts and cannot be subsequently changed or updated, except as follows: if, in any year, the expected annual contract spend is lower than the total Contract Quantities times the forward price curve value for that year, the forward price curve will be updated by the Procurement Administrator, in consultation with the IPA, ICC Staff, and the Procurement Monitor using then currently available price forecast data. If the expected annual contract spend is still lower than the total Contract Quantities times the updated forward price curve value for that year, the REC portion of the bundled bids will essentially become a credit, and the Commission will determine at that time, how to account for that credit in the determination of the bill-impact cap.

Because the quantities of RECs purchased under Long-Term PPAs will be insufficient to meet the statutory renewable targets, the IPA, subject to ICC approval, will determine how to address the remainder consistent with the statute. The way in which the IPA proposes to address such targets for the current procurement cycle are addressed in the main body of this Plan. Following the successful conclusion of a long-term renewable procurement event, the IPA will submit a confidential report to the Commission and the affected utility which contains the REC spend in each year of the resulting contracts that will be counted toward the renewable resources price cap.

PPA STRUCTURE

Generally, the PPAs will be standardized to allow for direct comparison of the bids on the basis of price alone. Renewable suppliers will have an opportunity to offer an annual target fixed quantity of energy and RECs. While some flexibility is included in the timing of certain delivery requirements, recognizing year-to-year and intra-annual variability of renewable resources, the PPAs will: (1) provide for reasonable minimum deliveries of energy and RECs, as a percentage of the target annual fixed quantity, on both a rolling 2-year basis and over the contract term; (2) provide for reasonable collateral to cover damages to the extent such minimums are not met; and (3) make clear that over the life of the contracts, the utilities will be obligated to purchase no more than the amount of energy and RECs equal to the annual quantity times 20 (years) at the contract price. The Procurement Administrator, in consultation with the IPA, the ICC Staff, and Procurement Monitor may also make appropriate price adjustments, for bid evaluation purposes, to allow for direct comparison of offers from renewable resources that have significantly different expected production profiles.

Long-Term Renewable Resources

Specific Terms and Conditions:

- **Term of PPAs.** In order to obtain a competitive, transparent price for the energy generated from renewable sources, the IPA will request long-term power purchase agreement contracts on a per MWh basis, for a term of 20 years.
- **Fixed Price Escalation.** The RFP criteria will require all offers to be in the form of a base price with a fixed escalation rate of 2% per year, provided that short-falls and carry-overs (as discussed in the Performance Guarantee section below) will be priced as of the year delivery was/is due.
- **Product Definition.** All resources that qualify as renewable energy resources under Section 1-10 of the IPA Act are eligible to submit offers in this procurement event. Sellers will specify an annual target Contract Quantity for energy plus the associated RECs that are expected to be provided on average in each delivery year (June through the following May). Seller will identify the specific generating unit or units that will be the source of the renewable energy and RECs. Capacity is not part of the product being purchased and will be discussed later. The seller's price must include and take into account any relevant transmission interconnection costs as well as the scheduled lead times to accomplish any required transmission interconnection work.
- **Financial Settlements for Energy.** The delivery of energy will be accomplished through a fixed for floating financial swap. The fixed price for the swap will be the full bundled contract price for the renewable PPA. The floating price will be the Locational Marginal Price ("LMP") at the utility's load zone for each hour in the day-ahead market of the applicable Regional Transmission Organization. The quantity of energy swapped under these agreements will be directly tied and equal to the bid percentage multiplied by the actual energy produced by the sellers specified unit or units. Seller will provide hourly-integrated generation meter data (from a revenue quality meter that satisfies RTO requirements) on a day after basis to the utilities and the IPA to enable them to perform the necessary calculations. For all energy produced by the applicable percentage of the seller's specified unit(s), the utilities will calculate the difference between the hourly LMP in the day ahead market for their zone, and the Contract Price. The price differences will be multiplied by the applicable percentage of the volume of energy produced by the specified unit(s) in each hour. For every hour that the unit(s) produced energy, if the LMP in the day ahead market at the utility's zone is less than the Contract Price, the utility will pay seller the difference in these costs multiplied by the quantity of energy produced by the unit(s) multiplied by the bid percentage related to the output from the relevant generating unit. For every hour that the unit(s) produced energy, if the LMP in the day ahead market at their zone is higher than the Contract Price, the seller will pay the utility the difference in these costs multiplied by the quantity of energy produced by the unit(s) multiplied by the bid percentage related to the output from the relevant generating unit. The net of the positive and negative payments will be settled on a monthly basis.

Use of this swap mechanism for the delivery of energy will not affect sellers' obligation to deliver all RECs associated with all of the energy swapped.

Long-Term Renewable Resources

- **Contract Payment.** Utilities have ICC-approved pass-through tariffs to recover all reasonable costs incurred to comply with ICC-approved procurement plans, and all such costs are statutorily deemed to be prudently incurred. 220 ILCS 5/16-111.5(l). In accordance with that authorization, utilities will recover the costs of purchasing, under the terms of the Long-Term PPAs, the quantity of annual energy and RECs specified in the Long-Term PPAs, as it may vary year-to-year subject to a total cap on the contract quantity over the duration of the Long-Term PPAs. Utilities shall not be liable under the Long-Term PPAs (or any related financial swap agreements) for any costs that cannot be recovered from customers through those pass-through tariffs.
- **Performance Guarantee.** Seller will commit and guarantee a minimum quantity of energy and RECs to be delivered, (“Contract Quantity”). The same Contract Quantity will apply to both the energy and the RECs. In each delivery year (June 1 through May 31), all energy produced by the unit or units specified in the Contract, multiplied by the applicable percentage, will be used first to satisfy the annual Contract Quantity commitment along with any carry-over quantity for a future year and/or short-fall quantity for a prior year. After the annual contract commitment is fully met, the seller may retain the full benefit and value of all energy and RECs produced by the unit(s) until the beginning of the next delivery period.
 - Seller Option to Carry-over – Energy and RECs. At the seller’s option, seller may deliver and be paid for up to 10% of the Contract Quantity above and beyond the annual commitment, which will be applied by the utilities to meet the Contract Quantity for the upcoming delivery year. In no event will the utility accept more than 120% of the Contract Quantity in any delivery year. The 120% would consist of 10% shortfall from the previous delivery year, 100% of the Contract Quantity in the current delivery year, and 10% carryover into the next delivery year.
 - Short-fall – RECs. In the event that at the conclusion of any delivery year the supplier has delivered, through the up to 10% carryover from the previous year and actual deliveries from the current year, less than 90% of the Contract Quantity, the seller will have 90 days to deliver replacement RECs, without the associated energy, to the utility so that sellers’ total deliveries are not less than 90% for the delivery year. No payment will be made by the utilities for these replacement RECs. Replacement RECs must be of the same type (wind, solar, landfill, etc.) and locational preference (Illinois and adjacent State, non-adjacent State) as the RECs provided under the contract. In the event that the seller delivers at least 90%, but less than 100% of the Contract Quantities for any year, the seller may cure that deficiency in the following delivery year by producing and delivering excess RECs plus energy in that year equal to the previous years shortfall. In no event will a seller be allowed to carry a shortfall of RECs greater than 10% of the annual Contract Quantity for more than 90 days into the next delivery year.

Long-Term Renewable Resources

- Short-fall – Energy. Similarly, energy shortfalls of no more than 10% may be carried forward and satisfied in the next delivery year. In the event that the seller fails to produce at least 90% of the Contract Quantity, the utility will compare the Contract Price to the average LMP Price at the utility load zone for the previous delivery year. If the average LMP Price is lower than the contract price, the seller will not be required to make any payment. If the average LMP Price is higher than the contract price, the seller will pay the utility the difference between the average LMP price and the contract price, times a quantity that would bring the shortfall to within 10% of the Contract Quantity.
- **Location of Generation.** The IPA procurement will solicit bids for Long-Term PPAs for renewable energy from all sources – whether in Illinois or outside consistent with Section 1-75(c)(3).
- **Delivery Point.** The delivery point for financially settling the contract will be the utility load zone. REC deliveries under this contract will be accounted for through the PJM GATS system or MISO M-RETS system.
- **Supplier credit requirements.**

For PPAs:

There will be separate credit requirements for energy and for RECs. For energy, this will be a non-margining contract as long as the Contract Value (Contract Quantity times Contract Price) for a three-year forward period is higher than the three-year forward Around the Clock (ATC) energy price at the utility load zone multiplied by the applicable Contract Quantity and then multiplied by a factor that reflects the average energy value of the specific resource type compared to the average ATC value. The utilities will perform daily mark to market calculations to enable this calculation. If however, the three-year forward ATC energy price multiplied by the applicable Contract Quantity and then multiplied by a factor reflecting the average energy value of the resource is greater than the three-year forward Contract Value, the supplier will post cash or a letter of credit (net of any unsecured credit allowance) with the utility equal to the difference in these two values.

For RECs:

The seller will post \$5 per REC in the form of cash or a letter of credit to guarantee delivery of the RECs over the three-year forward period (Contract Quantity times three). If the seller fails to deliver the required annual Contract Quantity of RECs and fails to cure that shortfall in the manner described above, the utilities may seize the REC collateral and direct the IPA to use the proceeds to procure as many replacement RECs as possible with the funds. In addition, the utility will have the right to terminate the contract if the seller fails to deliver all of the RECs in a delivery year (up to the Contract Quantity) associated with the specific unit(s) identified in the contract.

Long-Term Renewable Resources

- **Delivery Commencement.** Delivery under the Long-Term PPAs will begin on June 1, 2012.
- **New vs. Existing Generation.** The IPA procurement will solicit bids for Long-Term PPAs for renewable energy from new or existing projects.
- **Bundled.** The IPA procurement process will be on a bundled basis, for both the energy generated from the project as well as the RECs generated from the project.
- **Capacity Value to the ISO.** The capacity value of the renewable asset to PJM or MISO shall remain with the owner of the asset. Furthermore, any energy and RECs produced in excess of the PPA Contract Quantity remains an asset of the owner, available for sale to other buyers.

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY

Petition for Approval of
Procurement Plan

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Docket No. 09-0373

NOTICE OF FILING

Please take notice that on November 9, 2009, we caused to be filed via electronic mail with the Illinois Commerce Commission, the **Illinois Power Agency's Motion for Leave to File Supplemental Recommendations for the Procurement Plan and Appendix K**. A copy of the foregoing documents are hereby served upon you.



Henry T. Kelly, attorney for the
Illinois Power Agency

CERTIFICATE OF SERVICE

I, Henry T. Kelly, on oath state that I served this **Notice of Filing** and a copy of the **Illinois Power Agency's Motion for Leave to File Supplemental Recommendations for the Procurement Plan and Appendix K**, on the attached service list via electronic mail on November 9, 2009.



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