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'

BRIEF IN REPLY TO EXCEPTIONS

TO THE ADMINISTRATIVE LAW JUDGE'S

PROPOSED ORDER ON REHEARING

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June 2, 2014

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I. Introduction

Pursuant to 83 Ill. Admin. Code §200.830, the Renewables Suppliers submit this Brief in Reply to Exceptions ("RBOE") to the Administrative Law Judge's ("ALJ") Proposed Order on Rehearing ("PO"). The Renewables Suppliers are responding to proposals by Ameren Illinois Company ("AIC") and Commonwealth Edison Company ("ComEd") in their respective Briefs on Exceptions ("BOE").

The PO recommends that the Commission adopt the Renewables Suppliers' secondary proposal in this case. In the Renewables Suppliers' BOE, they demonstrated that the Commission should adopt the Renewables Suppliers' primary proposal. The specific proposals of AIC and ComEd to which the Renewables Suppliers are responding in this RBOE assume that the secondary proposal is adopted. The Renewables Suppliers are responding herein to AIC's and ComEd's proposals regarding the secondary proposal, but in doing so, the Renewables Suppliers do not waive their position that the Commission should adopt their primary proposal.

II. Response to Ameren Illinois

AIC proposes that text be added to the PO to state expressly that under the secondary proposal, one utility's hourly ACP funds shall not be used to purchase renewable energy credits ("RECs") that have been curtailed under suppliers' long-term power purchase agreements ("LTPPAs") with the other utility. The Renewables Suppliers agree with AIC's proposal and clarifying text. The Renewables Suppliers did not intend for their secondary proposal to be applied by requiring the use of one utility's accumulated hourly ACP funds to purchase RECs that have been curtailed under the other utility's LTPPAs.

III. Response to ComEd

In its BOE, ComEd proposes three revisions to the PO regarding the secondary proposal.

A. Response to ComEd's First Proposed Revision

In their rebuttal testimony on rehearing, the Renewables Suppliers presented a detailed implementation methodology for their secondary proposal (RS Ex. 1.2 at 9-10), which is set forth below (with emphasis added):

> Assuming a curtailment were declared for a year, the utility's accumulated balance of hourly ACP funds at the start of the year (June 1) would be used to purchase curtailed RECs during the ensuing year. **At the start of the year, the utility's accumulated balance of hourly ACP funds would be allocated pro rata to the LTPPA suppliers based on the Annual Contract Quantity ("ACQ") of each supplier's LTPPA(s) to the aggregate ACQ of all the utility's LTPPAs.** Going forward into the year, each supplier's allocated portion of the hourly ACP balance would be used to purchase the full amount of that supplier's curtailed RECs in each month, until that supplier's portion is exhausted. If a supplier's allocated portion of the hourly ACP funds is exhausted by the purchase of curtailed RECs from that supplier before the end of the year (May 31), that supplier can sell any remaining curtailed RECs for the remainder of the year to the IPA. (Based on Mr. Star's testimony, the IPA would continue to pay curtailed RECs at the Appendix K imputed REC price.)
>
> In terms of the settlement mechanics of the utility's purchase of curtailed RECs from a LTPPA supplier, **the utility would simply settle with the supplier each month for the curtailed RECS** purchased with hourly ACP funds on the basis of the same price data used to settle the non-curtailed part of the LTPPAs, *i.e.*, the LTPPA Contract Price less the Day-Ahead Hourly LMPs in that month.

The Renewables Suppliers repeated this description of the implementation methodology in their Initial Brief ("IB") on Rehearing. RS IB at 24. The Illinois Power Agency ("IPA"), in its Initial Brief, stated that "The IPA has no objection to the Commission adopting this methodology." IPA IB at 12-13. ComEd did not respond to the proposed implementation methodology in either its Initial Brief or its Reply Brief ("RB") on Rehearing. The ALJ, therefore, quite appropriately, recommended in the PO that the Commission adopt the Renewables Suppliers' proposed implementation methodology for the secondary proposal. However, in its BOE, ComEd, for the first time, proposed that the available balance of the utility's hourly ACP funds be allocated to the LTPPA suppliers on the basis of "Annual Contract Value" ("ACV") calculated as Price times Quantity, rather than on the basis of Annual Contract Quantity ("ACQ"). ComEd BOE at 3-4 and 5-6.

Despite this history, the Renewables Suppliers do not oppose the adoption of ComEd's proposed "ACV" allocation methodology solely for purposes of the 2014-2015 Plan Year that is the subject of this docket, **but** only if two additional modifications are made in the final Order.[1]

First, the Order should expressly state that the ACV allocation method is adopted solely for the 2014-2015 Plan Year and that the choice of allocation methodology under the secondary proposal should be reviewed in next year's IPA Procurement Plan case (*i.e.*, for the 2015-2016 Plan Year). Because ComEd did not make its proposal until the eleventh hour in this case, the Renewables Suppliers have had only one week to review it and analyze its basis and implications, and no record has been compiled on the pros and cons of the "ACV" versus the "ACQ" allocation method. In the limited time available, the Renewables Suppliers have been able to do sufficient analysis of the application of the ACV allocation method, based on the specific conditions anticipated for 2014-2015 (including the ComEd LTPPA curtailment level of approximately 7%), that they can accept the use of the ACV method for the 2014-2015 Plan Year only. However (assuming that the secondary proposal is adopted), the final Order should expressly state that the choice of allocation method will be fully reviewed and reconsidered in the 2015-2016 IPA Procurement Plan case.

Second, in connection with adoption of the ACV allocation method, the implementation methodology should be further modified as follows: If, at the end of the 2014-2015 Plan Year, it turns out that the portions of the ComEd ACP funds allocated to the respective LTPPA suppliers (i) were sufficient to purchase all of the curtailed RECs of some of the LTPPA suppliers (at the purchase price specified in the secondary proposal of Contract Price less Day-Ahead Hourly LMPs ("DAH-LMPs")) (the "fully compensated LTPPA suppliers"), but (ii) were insufficient to purchase all of the curtailed RECs of one or more of the other LTPPA suppliers (the "remaining LTPPA suppliers"), then the "surplus" hourly ACP funds that had been allocated to the fully compensated LTPPA suppliers should be used to purchase the remaining curtailed RECs of the

[1] In stating that they do not oppose adoption of ComEd's ACV approach for purposes of the 2014-2015 Plan year, the Renewables Suppliers are neither agreeing nor disagreeing with ComEd's arguments for the ACV approach stated at pages 3-4 of ComEd's BOE.

remaining LTPPA suppliers, to the extent the surplus funds permit. The "surplus" hourly ACP funds should be reallocated among the remaining LTPPA suppliers based on the ratio of the ACV of each remaining LTPPA supplier to the total ACV of the remaining LTPPA suppliers. The Renewables Suppliers submit that this additional provision is appropriate under the circumstances given that they have not had sufficient time or evidence to analyze the relative impacts of the "ACV" versus the "ACQ" allocation method on the individual LTPPA suppliers.

B. Response to ComEd's Second Proposed Revision

ComEd's second proposed revision is that the PO should be modified to make clear that the Commission "does not adopt the RS' proposal with respect to the IPA's purchase of curtailed RECs." ComEd BOE at 4. The Renewables Suppliers understand this modification is intended solely to recognize that the Commission cannot direct the IPA as to how to spend the funds in the IPA's Renewable Energy Resources Fund ("RERF"). The Renewables Suppliers do not object to including a statement in the Order to this effect. The Renewables Suppliers have recognized that the Commission cannot direct the IPA as to how to spend the monies in the RERF and that any purchase of curtailed RECs by the IPA would be a voluntary decision by the IPA.[2]

However, the Renewables Suppliers disagree with ComEd's specific proposed deletion from the PO of the last sentence in the first paragraph of ComEd's "Exceptions Language" on page 5 of ComEd's BOE. The sentence that ComEd proposes to delete is contained in a description of the Renewables Suppliers' proposal, not in a proposed finding or conclusion by the Commission. Deletion of the sentence would result in an incomplete description of the Renewables Suppliers' proposal. Therefore, a more appropriate revision to the PO to address ComEd's point would be to retain the sentence that ComEd proposes to delete but then add the following new text after that sentence:

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[2] *See* RS Ex. 1.0 at 4 ("Ideally, the IPA would also use this price calculation in purchasing curtailed RECs using monies in the Renewable Energy Resources Fund, but we understand that the Commission cannot direct the IPA to do so"); RS IB at 22 note 21, 23 note 23, and 25 note 24; RS RB at 27.

The RS recognize, however, that the Commission does not have authority to direct the IPA as to how to spend the funds in the RERF, and therefore that any purchase by the IPA of any remaining curtailed RECs would be solely a voluntary decision by the IPA.

C. Response to ComEd's Third Proposed Revision

ComEd requests that the implementation methodology for the secondary proposal should be modified to provide for quarterly settlements, rather than monthly settlements as specified in the Renewables Suppliers' proposed implementation methodology. ComEd BOE at 4-5. As with its first proposed revision, ComEd did not object to monthly settlements and ask for quarterly settlements until its BOE, although it could have raised this point earlier in the case. The Renewables Suppliers object to ComEd's third proposed revision. The Renewables Suppliers proposed monthly settlements of curtailed REC purchases under the secondary proposal because the settlement of curtailed RECs under the secondary proposal is exactly the same as the settlement of non-curtailed RECs, that is: Contract Price less DAH-LMPs for the month. *See* RS Ex. 1.0 at 4 (lines 79-95); RS Ex. 1.2 at 9-10 (quoted on p. 2 above). Therefore, under the secondary proposal, the utility and the supplier can simply settle for the non-curtailed RECs and energy and the curtailed RECs for the month on the same basis and at the same time. If the Commission adopts the secondary proposal, monthly settlements of curtailed REC purchases make much more sense than quarterly settlements because the settlements calculation and underlying data for both the non-curtailed and curtailed portions of the LTPPAs will be the same.

D. Revised Exceptions Language

To implement the adoption of ComEd's first proposed revision with the additional modifications proposed by the Renewables Suppliers, the adoption of ComEd's second proposed revision (but via different text than proposed by ComEd) and the rejection of ComEd's third proposed revision, the last paragraph of ComEd's exceptions language on page 6 of its BOE (which relates to the last paragraph of the "Commission's Analysis and Conclusions" section on page 55 of the PO) would be replaced with the following text (assuming that the Commission does not adopt the Renewables Suppliers' primary proposal, but rather adopts the secondary proposal):

> The Commission notes that ComEd did not propose these modifications until its Brief on Exceptions, although it could have raised them earlier in the case. As a result, the other parties have had little opportunity to consider ComEd's proposed modifications. Nevertheless, the RS state that they do not oppose ComEd's first modification, that is, to allocate the utility's accumulated balance of hourly ACP funds at the start of the year among the LTPPA suppliers on the basis of Annual Contract Value rather than Annual Contract Quantity, but only if (1) the Order expressly states that the Annual Contract Value allocation method is to be used only for the 2014-2015 year and that the choice of allocation method will be reviewed again in the next IPA Plan case; and (2) the Order states that if, at the end of the 2014-2015 Plan Year, it turns out that the portions of the utility's ACP funds allocated to the respective LTPPA suppliers (i) were sufficient to purchase all of the curtailed RECs of some of the LTPPA suppliers (at the purchase price specified in the secondary proposal of Contract Price less DAH-LMPs) (referred to for this purpose as the "fully compensated LTPPA suppliers"), but (ii) were insufficient to purchase all of the curtailed RECs of one or more of the other LTPPA suppliers (referred to as the "remaining LTPPA suppliers"), then the "surplus" hourly ACP funds that had been allocated to the fully compensated LTPPA suppliers will be used to purchase the remaining curtailed RECs of the remaining LTPPA suppliers, to the extent the surplus funds permit. The RS state that the "surplus" hourly ACP funds should be reallocated among the remaining LTPPA suppliers based on the ratio of the ACV of each remaining LTPPA supplier to the total ACV of the remaining LTPPA suppliers.
>
> The Commission agrees with the RS' proposed additional provisions. Accordingly, in the implementation of the secondary methodology, the Annual Contract Value allocation method shall be used as proposed by ComEd, but only for purposes of the 2014-2015 year, and what allocation method should be used will be reviewed again and determined in the IPA Procurement Plan case for the 2015-2016 year. Further, if, at the end of the 2014-2015 Plan Year, it turns out that the portions of the utility's ACP funds allocated to the respective LTPPA suppliers (i) were sufficient to purchase all of the curtailed RECs of some of the LTPPA suppliers (at the purchase price specified in the secondary proposal of Contract Price less DAH-LMPs) (the "fully compensated LTPPA suppliers"), but (ii) were insufficient to purchase all of the curtailed RECs of one or more of the other LTPPA suppliers (the "remaining LTPPA suppliers"), then the "surplus" hourly ACP funds that had been allocated to the fully compensated LTPPA suppliers will be used to purchase the remaining curtailed RECs of the remaining LTPPA suppliers, to the extent the surplus funds permit. The "surplus" hourly ACP funds shall be reallocated among the remaining LTPPA suppliers based on the ratio of the ACV of each remaining LTPPA supplier to the total ACV of the remaining LTPPA suppliers.
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> With respect to ComEd's second proposed modification, the Commission hereby clarifies that it is not directing the IPA to make any purchases of curtailed RECs using the RERF, or to make such purchases at any particular price or prices.

The Commission rejects ComEd's third proposed modification. In response to ComEd's modification the RS correctly pointed out that under the secondary proposal, the settlement of curtailed RECs is identical to the monthly settlement of non-curtailed RECs plus energy, namely, Contract Price less DAH-LMPS for the month. Therefore, the utility and the supplier can settle for curtailed RECs at the same time and using the same data and calculation, as they settle the non-curtailed portion of the LTPPAs, on a monthly basis as provided for in the LTPPAs.

In addition, Finding (4) of the PO would need to be modified as follows:

(4) the Commission finds that curtailed RECs should be purchased by the utilities, using their accumulated balance of funds from assessing the ACP rate to their customers served on hourly pricing tariffs, at prices equal to the Contract Prices under the LTPPAs less the DAH-LMPs, using the implementation methodology proposed by the Renewables Suppliers in its rebuttal testimony, as modified in Section VIII of this Order;

IV. Conclusion

For the reasons stated in their Brief on Exceptions, the Renewables Suppliers continue to advocate that the Commission should adopt the Renewables Suppliers' primary proposal. However, if the Commission decides to adopt the Renewables Suppliers' secondary proposal, then the Commission's order should incorporate the Renewables Suppliers' response to AIC's and ComEd's modifications as set forth in this RBOE.

Respectfully submitted,

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