

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

The Illinois Power Agency)
)
Petition for Approval of the 2016 IPA) **Docket No. 15-0541**
Procurement Plan Pursuant to Section)
16-111.5(d)(4) of the Public Utilities Act)

**RENEWABLES SUPPLIERS’ BRIEF ON EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGES’ PROPOSED ORDER**

The Renewables Suppliers submit this Brief on Exceptions (“BOE”) to the Administrative Law Judges’ Proposed Order (“ALJPO”) regarding the Illinois Power Agency’s (“IPA”) proposed 2016 Electricity Procurement Plan (“IPA Plan”).¹ The Renewables Suppliers take exception to the ALJPO’s conclusions on the following three topics:

- (1) Procedures for approving the electric utilities’ revised load forecasts to be submitted in March 2016 (ALJPO §IV.B.1.g – pages 80-81).
- (2) Including additional REC procurements in the IPA Plan during the 2016 Plan Year² (ALJPO §IV.B.10.e and f – pages 108 and 114-115).
- (3) Commission recommendations concerning the IPA’s use of the Renewable Energy Resources Fund (“RERF”) to procure RECs (ALJPO §IV.B.14.e – page 136).

In its argument in support of each exception, below, the Renewables Suppliers have also provided proposed replacement or additional text for the applicable portions of the ALJPO.

I. Exception No. 1 – The Commission Should Provide the Opportunity for Interested Parties to File Comments on the Revised March Load Forecasts, and the Commission Should Decide Whether to Adopt the Revised March Load Forecasts (ALJPO §IV.B.1.g – pages 80-81)

As described at pages 74-76 and 80-81 of the ALJPO, the Renewables Suppliers presented three alternative proposals relating to the submission and adoption of the revised load

¹ The Renewables Suppliers (sometimes referred to in this BOE as the “RS”) are comprised of the following companies: Invenergy LLC and its affiliated project companies Grand Ridge Energy IV LLC and Invenergy Illinois Solar I LLC; and NextEra Energy Resources, LLC and its subsidiary project company FPL Energy Illinois Wind, LLC. Each of the project companies holds a long-term power purchase agreement (“LTPPA”) with Commonwealth Edison Company (“ComEd”) to supply electricity from renewable resources bundled with the associated renewable energy credits (“RECs”).

² As used in this BOE, a “Plan Year” or “Delivery Year” is the period from June 1 of a calendar year to May 31 of the following calendar year.

forecasts to be submitted by the electric utilities in March 2016. The ALJPO does not adopt any of the Renewables Suppliers' proposals. For purposes of this BOE, the Renewables Suppliers are only taking exception to the ALJPO's rejection of one of the Renewable Suppliers' proposals, namely, the proposal that the electric utility should file its revised March load forecast (if any) in this docket, interested parties should be given a brief time period to file comments on the revised load forecast, and the Commission should then decide, based on its review of the revised load forecast and the filed comments, whether the revised load forecast should be adopted for purposes of the IPA Plan for the upcoming Plan Year beginning June 1.³

The Renewables Suppliers' proposal is based on §16-111.5(d)(4) of the Public Utilities Act ("PUA"), 220 ILCS 5/16-111.5(d)(4), and on equity and due process considerations. Section 16-111.5(d)(4), which is the section concerning the Commission's approval of the annual IPA Plan, specifies:

The Commission shall approve the procurement plan, including expressly the forecast used in the procurement plan, if the Commission determines that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability. (Emphasis added.)

Under the procedure currently used (and which the IPA and the ALJPO propose be continued for the 2016-2017 Plan Year), the decision whether to adopt a utility's revised load forecast for purposes of the IPA Plan is made by the utility itself along with the IPA, Commission Staff, and the Procurement Monitor. The Commission is not involved in the decision. This process simply does not comply with the statute. Further, the proposed "Commission Analysis and Conclusion" on this issue in the ALJPO does not even mention §16-111.5(d)(4), let alone explain how the current procedure complies with the PUA.

³ Thus, the Renewables Suppliers are no longer arguing for adoption of their other two alternate proposals: (1) that the Commission should decide in its December 2015 order in this docket, based on the strength of the utilities' load forecasts included with the IPA Plan, that no curtailments of the LTPPAs will be needed in the 2016-2017 Plan Year; and (2) that the LTPPA suppliers should be included (along with the utility, the IPA, Commission Staff and the IPA's Procurement Monitor) in the group that decides, by consensus, whether a revised March load forecast should be adopted.

With respect to equity, a change in an electric utility's revised March load forecast compared to its load forecast included with the originally-filed IPA Plan can result in a determination that the utility's purchases under its LTPPAs must be curtailed during the upcoming Plan Year in order to comply with the Renewable Portfolio Standard ("RPS") rate caps in §1-75(c)(2) of the IPA Act (20 ILCS 3855/1-75(c)(2)). It can also impact other procurement decisions (*e.g.*, amounts to be procured) under the IPA Plan for the upcoming Plan Year. For purposes of these exceptions, the Renewables Suppliers do not dispute the proposition, relied on by the ALJPO, that the utility, along with the IPA, Staff and the Procurement Monitor, have no financial interest in the review process or the final load forecast values (ALJPO at 81). Nonetheless, both equity and due process considerations warrant that parties potentially impacted by revisions to the original load forecast should have an opportunity to submit comments on revisions to the load forecast that may impact their financial interests. This is particularly true if the original load forecast, approved by the Commission in its December order, shows no need for curtailments, but the subsequent, revised March forecast shows curtailments are needed.

The Renewables Suppliers also do not dispute that the utilities have expertise in load forecasting, but this does not preclude the possibility that other interested entities may have valuable input to provide to the review of the revised load forecasts, such as the likelihood of particular municipalities continuing or terminating their municipal aggregation programs (which has been the major driver in changes to the "eligible retail customer" load of the electric utilities during the past several years). In managing their businesses, the Renewables Suppliers pay particular attention to "macro" factors that can impact customer load switching between utilities and competitive suppliers, such as adoption and termination of municipal aggregation programs, and price differentials between the utilities' offer prices to their eligible retail customers and the wholesale market supply prices available to competitive suppliers. In short, the foursome that

has previously been anointed to decide whether revised March load forecasts should be adopted do not hold a monopoly on information, expertise or market intelligence.

The ALJPO states, without any accompanying analysis, that the timetable for adoption and use of the revised March load forecasts “does not allow for the filing of updated forecasts with the Commission, the filing of comments from interested parties and a Commission determination.” ALJPO at 81. This concern is readily addressed. First, the electric utilities already file their revised March load forecasts with the Commission on e-Docket, in the IPA Plan docket that was conducted in the preceding calendar year, and serve the filing on the parties to that docket. Second, the Renewables Suppliers have proposed that only 14 days be allowed for interested parties to file comments on the revised forecasts, although if timing is as important as the ALJPO states, a few days could be shaved from the comment period. Finally, the Renewables Suppliers are proposing that the Commission decide whether to adopt the revised load forecast based solely on review of the revised load forecast (including accompanying explanations of changes provided by the utility) and the filed comments, without any additional briefs or pleadings. For the current (2015-2016) Plan Year, Ameren Illinois and ComEd filed their revised March load forecasts on March 25, 2015 and April 6, 2015, respectively. (*See e-Docket - Documents - for Docket 14-0588.*) Simply establishing a modestly earlier required filing date of, say, March 15 would adequately address the timing concerns expressed in the ALJPO.

Finally, the Renewables Suppliers acknowledge (as they did in their original Objections to the IPA Plan⁴) that they made a similar proposal in an earlier IPA Plan case, and the Commission did not adopt it. However, the Commission’s decisions are not *res judicata*,⁵ and the Commission has the ability and authority to revisit this issue in the present docket based on

⁴ Objections of the Renewables Suppliers Regarding the Illinois Power Agency’s 2016 Procurement Plan, filed October 5, 2015 (“RS Objections”), at 3.

⁵ *Mississippi River Fuel Corp. v. ICC*, 1 Ill. 2d 509 (1953); *Lakehead Pipeline Co. v. ICC*, 296 Ill. App. 3d 942 (3d Dist. 1998).

the factors and considerations presented. The Renewables Suppliers urge the Commission to adopt their proposal and direct that item no. 2 in the “Action Plan” in the IPA Plan⁶ be revised to specify that interested parties will have a brief period after the utilities file their revised March 2016 load forecasts (if any) to submit comments on the revised forecasts, and that the Commission (rather than a council of the utility, the IPA, Commission Staff and the Procurement Monitor) will determine whether or not the revised load forecast should be adopted for purposes of the 2016-2017 IPA Plan.

Accordingly, the second full paragraph on page 81 of the ALJPO (in §IV.B.1.g) should be deleted in its entirety and replaced with the following text:

Having fully considered the arguments of the parties, the Commission adopts the Renewables Suppliers’ proposal that parties should be allowed to file comments on the electric utilities’ March load forecast updates (if any), and that the Commission should then issue an order determining whether or not each utility’s revised load forecast should be adopted for purposes of the IPA Plan for the Plan Year beginning the following June 1. The Commission agrees that under Section 16-111.5(d)(4) of the PUA, it is the Commission that should be “expressly” approving the load forecast used in the approved IPA Plan. The Commission also agrees that it is reasonable, where a revised load forecast is being presented for adoption, that parties to the case potentially impacted by the revised forecast should have an opportunity to submit comments to the Commission concerning the revisions. The Commission emphasizes, however, that for the reasons articulated by several parties, this needs to be an expeditious process. Therefore, the Commission directs that the following process shall be followed: (1) Each electric utility should file its updated load forecast, or a statement that no update is needed to its load forecast that was included in the originally-filed IPA Plan, in this docket by March 15, 2016. The filing should contain a summary of the revisions to inputs or assumptions that have resulted in revisions (if any) to the previously-submitted load forecast. (2) The ALJs should then set a filing date no less than 10 days and no more than 14 days following the date that an updated load forecast is filed, by which parties may file comments on the utility’s updated load forecast. Comments should be limited to the revisions to the load forecast from the originally-filed forecast, including any changes in inputs or assumptions, and should not repeat comments or objections to the load forecast that were made during the original proceedings in the docket, or attempt to re-argue issues that were litigated and resolved in the Commission’s original order. (3) Following the deadline for submitting comments, the Commission will issue an order stating whether or not the utility’s updated load forecast shall be adopted for purposes of the IPA Plan for the Plan Year beginning on June 1 immediately following.

⁶ IPA Plan at 6 (§1.4).

II. Exception No. 2 – The Commission Should Adopt the Renewables Suppliers’ Proposal that the IPA Plan Should Include Limited Additional Procurement of RECs Under Short-Term Contracts (ALJPO §IV.B.10.e and f – pages 108, 114-115)

The Renewables Suppliers take exception to the ALJPO’s failure to adopt (or even expressly consider) the Renewables Suppliers’ proposal that the IPA Plan should include an additional procurement event or events during the 2016-2017 Plan Year for a limited procurement of RECs for Delivery Years 2017-2018 through 2020-2021, pursuant to contracts of one to no more than 5 years in length. This proposal was fully explained in the RS Objections at pages 4-8, the RS Responses to Objections at pages 1-5,⁷ and the RS Reply to Responses at pages 6-9.⁸ It is fairly summarized in §IV.B.10.e (pages 113-114) of the ALJPO, with the exception that at certain points of the description, the ALJPO describes the Renewables Suppliers as proposing an additional procurement of only RECs from Distributed Generation sources (“DG RECs”), similar to the Environmental Law and Policy Center’s (“ELPC”) proposal. This merging of the Renewables Suppliers’ proposal into the ELPC proposal continues into the “Commission Analysis and Conclusion” section on pages 114-115 of the ALJPO, where the ALJPO lumps the Renewables Suppliers’ proposal with ELPC’s proposal for additional procurement of DG RECs, and does not separately discuss the Renewables Suppliers’ proposal or any of the reasons underlying it. In fact (as correctly stated in the first full paragraph on page 114 of the ALJPO), the Renewables Suppliers propose that the additional procurement event(s) should procure RECs in approximately the sub-target percentages specified in §1-75(c)(1) of the IPA Act (20 ILCS 3855/1-75(c)(1)): wind, 75%; solar, 6%, and DG, 1%.

The main reason given by the ALJPO for not adopting the proposals for an additional procurement event(s) during the 2016-2017 Plan Year to procure RECs for subsequent Delivery Years is that additional customer switching from the electric utilities to competitive suppliers in

⁷ The Renewables Suppliers’ Responses to Certain Objections to the Illinois Power Agency’s 2016 Procurement Plan, filed Oct. 20, 2015 (“RS Responses to Objections”).

⁸ The Renewables Suppliers’ Reply to Responses to Objections to the Illinois Power Agency’s 2016 Procurement Plan, filed Oct. 30, 2015 (“RS Reply to Responses”).

those years could result in less need for RECs to meet the RPS targets for those years. ALJPO at 115. However, the Renewables Suppliers’ proposal – which, again, is not discussed in the “Commission Analysis and Conclusion” at pages 114-115 of the ALJPO – is quite conservative, takes account of the customer switching risk, and would use only a small portion of the currently indicated Available RPS Budgets for the 2017-2018 through 2020-2021 Delivery Years.⁹ This conservatism is accurately captured in the ALJPO’s summary of the Renewables Suppliers’ proposal, at pages 113-114:

. . . [T]he Renewables Suppliers propose that the IPA should conduct a procurement event during the 2016-2017 Plan Year to procure RECs from wind and solar generation sources under short-term contracts (1 year to 5 years duration) to cover a portion of the currently projected shortfall in meeting the wind and solar RPS targets for the 2017-2018 through 2020-2021 Delivery Years. Renewables Suppliers Objections at 4-8. However, the Renewables Suppliers urge caution in the amount of the currently projected uncommitted RRB [Renewable Resources Budget] for those four Delivery Years that should be committed to pay for REC contracts entered into in procurement events conducted in 2016-2017. This is because the available RRB for an electric utility in each year is a function of its eligible retail customer load, and the electric utilities’ eligible retail customer loads have been volatile and difficult to forecast in recent years. Renewables Suppliers Objections at 5-8, IPA Plan at 126-28 and 131-32. For this reason, the Renewables Suppliers recommend that the IPA conduct a procurement event or events in the 2016-2017 Plan Year to procure RECs under short-term contracts in amounts that would not exceed the following percentages of each electric utility’s currently forecasted available RRB for the 2017-2018 through 2020-2021 Delivery Years:

Delivery Year 2017-2018:	30%
Delivery Year 2018-2019:	25%
Delivery Year 2019-2020:	20%
Delivery Year 2020-2021:	10%

According to the Renewables Suppliers, the objective of this cautious approach is to avoid a situation in which the electric utilities’ eligible retail customer load drops sharply (due to customer migration to ARESSs), the RRB for a future year(s) correspondingly shrinks, and the REC procurement contracts that have been entered into (even REC contracts with terms of 5 years or less) cannot be fulfilled but rather must be curtailed. . . .

⁹ The currently forecasted Available RPS Funds for each Delivery Year are equal to (i) the currently forecasted Delivery Year RPS Budget based on the utility’s current load forecast and the statutory RPS percentage for that Delivery Year, less (ii) the cost of the already-contracted RECs for that Delivery Year. RS Objections at 7.

Further, the Renewables Suppliers proposed that:

. . . [T]he short term REC procurement contracts should specify that REC purchases are subject to available funding under each utility's RRB as determined by the final approved load forecast or load forecast update for the respective Delivery Year. Finally, LTPPA deliveries and payments must be considered senior to the delivery and payment for RECs procured under the short term REC contracts. In other words, in the case of a future shortfall of RRB funds to pay for all contracted renewable energy resources, which leads to curtailments (a risk minimized by the short-term nature of the REC contracts and the limitations on the portion of the RRB that can be spent on the REC procurements, as Renewables Suppliers are proposing), the short-term REC contracts would be the first to be curtailed. (RS Objections at 7; *see* ALJPO at 114.)

In making their proposal, the Renewables Suppliers recognized the volatility and uncertainty in the utilities' eligible retail load levels that has been experienced in recent years, primarily due to the advent of municipal aggregation programs:

The Renewables Suppliers strongly believe that in order to promote the further development of renewable generating resources serving the State of Illinois, it will be necessary for the IPA to conduct more long-term renewable resources procurements, since many developers require and use long-term off-take agreements in order to finance the construction of new wind and solar generation facilities. The Renewable Suppliers recognize, however, that the stability of the electric utilities' eligible retail customer load has been an issue over the past two to three years, due primarily to the migration of customers from the utilities to alternative retail electric suppliers, and back to the electric utilities, as a result of the initiation and subsequent reduction in active municipal aggregation programs and the differences (both positive and negative) between market electricity prices and the electric utilities' price offerings to their eligible retail customers. Given the instability in the size of ComEd's and Ameren Illinois' eligible retail customer loads subject to RPS requirements over the last two to three years, the Renewables Suppliers recognize that conducting a procurement event for new long-term renewable resources supply during the 2016-2017 Plan Year may be premature. To determine that the levels of the utilities' eligible retail customer loads subject to the RPS have sufficiently stabilized, another one to two years of experience may be appropriate before the IPA resumes conducting procurement events for long-term renewable resources contracts. (RS Objections at 5-6.)

However, the Renewables Suppliers also emphasized the need for some additional REC procurement activity in the 2016-2017 Plan Year, albeit appropriately conservative, limited, and short-term as described above. The Renewables Suppliers stated that conducting short-term REC procurements in 2016-2017 would be beneficial for the REC market in Illinois, as it would

generate some activity in the markets for wind and photovoltaic RECs, which has been generally lacking during the past several years. RS Objections at 6. An additional reason to conduct REC procurements for the utilities during the 2016-2017 Plan Year is that such procurements would enable the IPA to conduct REC procurements using the RERF, “in conjunction with” procurements for electric utilities. IPA Act §1-56(c) (20 ILCS 3855/1-56(c)). This would provide a basis for the IPA to procure RECs, pursuant to §1-56(c), using its current substantial balance in the RERF, which exceeds \$116,500,000 (ALJPO at 133). RS Response to Objections at 6; *see* ALJPO at 134-135.

Although the ALJPO’s “Commission Analysis and Conclusion” section does not expressly discuss the Renewables Suppliers’ proposal for limited short-term REC procurements, the ALJPO seems to have based its conclusion to reject ELPC’s proposal for additional DG REC procurements on the proposition that *any* renewables procurement beyond what the IPA proposes in the filed Plan, and any procurement of RECs beyond what is needed to meet the RPS targets in the upcoming Plan Year, is unduly risky due to the possibility of load shifting. The Renewables Suppliers’ proposal, however, appropriately accounts for this risk, by:

- purchasing RECs under contracts with only one, three, and five year terms, nothing longer;
- spending only a small portion of the currently forecasted Available RPS Funds for each utility for the succeeding four Delivery Years;
- spending a lower percentage of the currently forecasted Available RPS Funds in each succeeding year over the four years (thereby recognizing that load forecast uncertainty increases the farther into the future we go);¹⁰ and
- expressly providing for the REC contracts to specify that the REC purchases in each Delivery Year are subject to actual available funding under each utility’s Renewable Resources Budget for the Delivery Year and that deliveries and payments under the existing LTPPAs will be considered senior to delivery and payment for the RECs procured under the short-term REC contracts.¹¹ RS Objections at 7-8.

¹⁰ Specifically, 30% of the Available RPS Funds for Delivery Year 2017-2018; 25% for Delivery Year 2018-2019; 20% for Delivery Year 2019-2020; 10% for Delivery Year 2020-2021. RS Objections at 8.

¹¹ IPA argued that with these contractual limitations, bidders in the REC procurements would add risk premiums to their bid prices that would increase the costs of the RECs. ALJPO at 109. However, under

Fundamentally, the Renewables Suppliers are concerned that if even the modest, conservative REC procurement program they propose, using contracts extending no more than five years into the future, is deemed too risky due to potential future load-shifting from the utilities to competitive suppliers, then there will never again be any procurements of RECs in the IPA's Plan other than one-year contracts to procure RECs needed to meet the RPS target for the immediately upcoming Delivery Year. This could stifle the further development of renewable energy resources and the renewable energy resources market in Illinois.

Accordingly, the following revisions and additions should be made on pages 108 and 114-115 of the ALJPO:

A. On page 108, the caption of §IV.B.10 should be revised as follows:

~~Section 8 Whether ELPC's and the Renewables Suppliers' Requests that the IPA Expand or Add its Proposed DG REC Procurements in early 2016 in order to Leverage Expiring Federal Tax Credits to benefit Illinois Customers Should be Granted~~

The caption as currently written refers only to ELPC's proposal and not to the Renewables Suppliers' proposal.

B. On the last line of the second full paragraph on page 114 of the ALJPO, the reference to "Renewables Suppliers Objections at 7" should be changed to "Renewables Suppliers Response at 5." The description of the Renewables Suppliers' position set forth in that paragraph (which was commenting on ELPC's proposal for additional DG REC procurements) is taken from the RS Responses to Objections at page 5.

C. The first sentence of the third full paragraph on page 114 of the ALJPO (in the "Commission Analysis and Conclusion" section) should be revised as follows: ~~"Both ELPC and the Renewables Suppliers recommends~~ that the IPA should expand DG REC procurements in

§1-75(c)(1) of the IPA Act, only "cost-effective" RECs can be procured, meaning that the price of the RECs cannot cause the RPS rate caps to be exceeded and cannot exceed benchmarks for market prices for renewable energy resources in the region established by the Procurement Administrator in consultation with IPA staff, Commission staff, and the Procurement Monitor, and subject to Commission review.

2016 using RRB and ACP funds collected from real time pricing customers.” The sentence as written in the ALJPO describes ELPC’s proposal, not the Renewables Suppliers’ proposal.

D. In the seventh line of the first full paragraph on page 115 of the ALJPO, the phrase “and supported by the Renewables Suppliers” should be deleted. The Renewables Suppliers have not specifically supported ELPC’s proposal for additional procurement of DG RECs; rather, the Renewables Suppliers recommended certain modifications and limitations to ELPC’s proposal for additional procurement of DG RECs, if ELPC’s proposal were to be adopted. *See* RS Responses to Objections at pages 1-5.

E. The following paragraph should be added following the first full paragraph on page 115 of the ALJPO, as an additional paragraph in §IV.B.10.f, Commission Analysis and Conclusion:

The Commission, however, adopts the Renewables Suppliers’ proposal, as described in Section IV.B.10.e of this Order, above, that the IPA Plan for the 2016-2017 Plan Year should include an additional procurement event or events for RECs to be purchased under short-term contracts of no longer than 5 years duration, for delivery in the 2017-2018 through 2020-2021 Delivery Years. The Renewables Suppliers’ proposal is conservative and limited and appropriately recognizes the potential risks associated with possible load shifting away from the utilities that would reduce their currently forecasted eligible retail customer load and renewable energy resources amounts needed to meet the RPS requirements, while nonetheless providing for some additional, needed procurement activity in the REC markets. The amounts to be expended in these procurements should not exceed the percentages proposed by the Renewables Suppliers of each utility’s currently forecasted available Renewable Resources Budget for each of the 2017-2018 through 2020-2021 Delivery Years: 30% for Delivery Year 2017-2018; 25% for Delivery Year 2018-2019; 20% for Delivery Year 2019-2020; and 10% for Delivery Year 2020-2021. The REC procurement contracts should also provide that the REC purchases under those contracts are subject to the limitations proposed by the Renewables Suppliers, as set forth in the last paragraph of Section IV.B.10.e of this Order, above.

III. Exception No. 3 – The Commission’s Order Should Make Recommendations to the IPA on the Use of the Renewable Energy Resources Fund (ALJPO §IV.B.14.e – page 136)

As reported in the IPA Plan and stated on page 133 of the ALJPO (§IV.B.14.a), the balance in the IPA’s RERF as of September 28, 2015 is \$116,573,040. The Renewables

Suppliers, ELPC, and Wind on the Wires each recommended that the Commission's Order in this proceeding should make recommendations to the IPA concerning spending funds in the RERF on procurement of RECs during the 2016-2017 Plan Year. Specifically, the Renewables Suppliers urged that the Commission's Order recommend to the IPA that (1) during the 2016-2017 Plan Year, the IPA should conduct REC procurements, using funds in the RERF, in conjunction with procurement events for the utilities; and (2) any such procurements using the RERF should, in the aggregate, procure RECs from wind, solar and DG resources in approximately the percentages stated in §1-56(b), specifically, 75% from wind resources, 6% from photovoltaic resources, and 1% from DG resources. RS Responses to Objections at 6; ALJPO at 135.

The ALJPO punts on these recommendations, stating that it agrees with the IPA that it would be "inappropriate for the Commission to offer recommendations on planned disbursements from the RERF collected on behalf of ARES customers" and that the Commission "declines to make any recommendation concerning the IPA's use of these funds." ALJPO at 136. The Renewables Suppliers recognize that the Commission does not have authority to direct the IPA as to how to spend the funds accumulated in the RERF (*see* ALJPO at 134). However, the Renewables Suppliers see no reason why the Commission should not use its expertise and its consideration of the parties' proposals as to how the RERF should be used, to make recommendations to the IPA.

Indeed, the Renewables Suppliers believe that the final IPA Plan for a year should be comprehensive and should set forth both the IPA's plans for utility procurements (which would be subject to Commission approval) and the IPA's plans for use of the RERF monies during the Plan Year (which would not be subject to Commission approval), in order to provide interested entities with a complete picture of the planned renewable resources procurement activities during the Plan Year. A clear and definitive articulation in the IPA Plan for the IPA's plans to use the

RERF in the upcoming year helps to inform and shape the remainder of the IPA Plan (*i.e.*, the portion subject to Commission approval) for the year. RS Reply to Responses at 10-11. Additionally, including recommendations by the Commission to the IPA on the use of the RERF during the Plan Year would be fully consistent with the Commission's responsibility under §16-111.5(d)(4) of the PUA to approve a procurement plan that "will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability."

The Renewables Suppliers note that the Commission has not previously been as reticent as the ALJPO would have it to make recommendations to the IPA on the expenditure of monies in the RERF. *See* the Commission's Order in Docket 12-0544 on the 2013 IPA Plan, at pages 113-114, where the Commission stated that it was "troubled by the IPA's interpretation of Section 1-56(c) of the IPA Act," and that:

It seems clear to the Commission that requiring potentially hundreds of millions of dollars intended to support renewable energy resources to sit dormant in a fund for years on end is highly unlikely to be what the legislature intended in enacting Section 1-56(c) of the IPA Act. This is especially true when an alternative reading – a reading just as well-supported by the plain language of the statute, as set out above – would result in payments made into the Renewable Energy Resources Fund then being used for the annual procurement of renewable energy resources, which appears to be the clear intent of this provision. While the Commission recognizes that responsibility for interpreting, applying, and enforcing Section 1-56(c) of the IPA Act rests with the IPA, the Commission maintains a strong interest in seeing the broader policy objectives of both the IPA Act and the PUA achieved, and encourages the IPA to reconsider its stated interpretation consistent with those objectives.¹²

Accordingly, the Renewables Suppliers urge the Commission to revise §IV.B.14.e, Commission Analysis and Conclusion, at page 136 of the ALJPO, as follows:

The IPA holds funds in the RERF to procure renewable energy resources pursuant to Section 1-56 of the IPA Act. The IPA indicates that it would be inappropriate for the Commission to offer recommendations on planned disbursement from the RERF collected on behalf of ARES customers. ~~When the IPA develops its plan to use these funds, stakeholders will have an opportunity to provide input and comments on the best way to use these funds. The Commission~~

¹² *Illinois Power Agency*, Docket 12-0544 (Dec. 19, 2012), at 114.

agrees with the IPA and declines to make any recommendation concerning the IPA's use of these funds. The Commission recognizes, as it has in prior IPA Plan cases, that it has no authority to direct the IPA as to how the IPA should expend the funds accumulated in the RERF. However, the Commission disagrees with the IPA's position that the Commission should refrain from utilizing its expertise and consideration of the record and refrain from making recommendations to the IPA on the use of the RERF. The Commission notes the substantial accumulated balance in the RERF, which represents monies collected from Illinois retail electricity consumers that the legislature intended to be spent on the procurement of renewable energy resources so that, in effect, retail electricity sales to ARES customers would result in the procurement of renewable energy resources in accordance with the RPS just as do retail electricity sales to the electric utilities' eligible retail customers. For the 2016-2017 Plan Year, the Commission recommends that the IPA utilize the RERF to conduct REC procurements in conjunction with procurement events for the utilities; and that any such procurements using the RERF should, in the aggregate, procure RECs from wind, solar and DG resources in approximately the percentages stated in Section 1-56(b) of the IPA Act, specifically, 75% from wind resources, 6% from photovoltaic resources, and 1% from DG resources. The Commission also urges the IPA to include, in its filed Plans in future years, more comprehensive statements of its plans to use the RERF during the upcoming Plan Year.

IV. Conclusion

The Renewables Suppliers respectfully request that the Commission's final order in this proceeding adopt the Renewables Suppliers' exceptions and proposed revisions to the ALJPO.

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused the Renewables Suppliers' Brief on Exceptions in ICC Docket 15-0541 to be served on each of the persons on the Service List by e-mail on November 20, 2015.

/s/ Owen E. MacBride

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