

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

The Illinois Power Agency)
)
Petition for Approval of the 2017 IPA) **Docket No. 16-0453**
Procurement Plan Pursuant to Section)
16-111.5(d)(4) of the Public Utilities Act)

**OBJECTIONS OF THE RENEWABLES SUPPLIERS REGARDING
THE ILLINOIS POWER AGENCY’S 2017 PROCUREMENT PLAN**

I. Introduction

Pursuant to Section 16-111.5(d)(3) of the Public Utilities Act, 220 ILCS 5/16-111.5(d)(3), the companies listed below, collectively referred to as the Renewables Suppliers, submit these Objections regarding the Illinois Power Agency’s (“IPA”) proposed 2017 Electricity Procurement Plan (“IPA Plan”). The Renewables Suppliers are comprised of the following companies:

- EDP Renewables North America LLC and its affiliated project companies Meadow Lake Wind Farm I LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm III LLC, Meadow Lake Wind Farm IV LLC, and Blackstone Wind Farm LLC.
- 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 (“LTTPA”) with one or both of Ameren Illinois Company (“AIC”) or Commonwealth Edison Company (“ComEd”) to supply electricity from renewable resources bundled with the associated renewable energy credits (“RECs”).

In its Order on Rehearing in Docket 13-0546 (June 17, 2014), regarding the IPA’s 2014 Procurement Plan, the Commission ruled that in the event of curtailment of purchases of renewable energy resources under the LTTPAs due to operation of the statutory rate cap (20 ILCS 3855/1-75(c)(2)), funds accumulated by the electric utilities through applying (pursuant to 20 ILCS 3855/1-75(c)(5)) the Alternative Compliance Payment (“ACP”) rate to sales to their

customers taking service on the utility's hourly pricing tariff ("Hourly ACP Funds"), should be used by the utilities to purchase the curtailed LTPPA RECs. Docket 13-0546, Order on Rehearing, at 53-58. The Renewables Suppliers' Objections to the IPA Plan relate to the proposed use of the utilities' Hourly ACP Funds to procure RECs from Distributed Generation resources ("DG RECs").

II. Use of Utility Hourly ACP Funds to Fund Procurement of DG RECs

The IPA Plan proposes that there be two procurement events conducted during 2017 to procure DG RECs for ComEd and AIC, with the procurements to be funded by the utilities' accumulated Hourly ACP Funds, rather than from the Renewable Resources Budget. As required by 20 ILCS 3855/1-75(c)(1), the DG RECs must be procured under five-year contracts. IPA Plan at 3, 6, 96-98.

In their comments to the IPA on its draft 2017 Procurement Plan ("Draft Plan"), the Renewables Suppliers expressed concern that the Draft Plan was not sufficiently clear that the proposed 2017 DG REC procurements would be funded from the utilities' Hourly ACP Funds only to the extent that those funds were not needed to fund the purchase of curtailed LTPPA RECs during the 2017-2018 Delivery Year (should a curtailment be necessary), using the pricing methodology adopted by the Commission in the Docket 13-0546 Order on Rehearing.¹ In response to the Renewables Suppliers' comments, the IPA Plan has been revised to more clearly state this condition to the proposed DG REC procurements. Specifically, on pages 96-97, the IPA Plan has been revised from the Draft Plan to provide as follows:

Starting with the 2013-2014 delivery year, the Commission approved the use of hourly ACP funds to purchase RECs from any curtailed LTPPPAs. In the unlikely event of future curtailments, the IPA recommends a continuation of that

¹ ComEd's and AIC's load forecasts included in the IPA Plan indicate that no curtailments of purchases under the LTPPAs are projected to be needed in 2017-2018 or in any of the ensuing four years. However, because the IPA has proposed that, as in previous years, the final determination of the need to curtail the LTPPAs in 2017-2018 should be based on the utilities' March 2017 load forecast updates, it is still possible that there could be curtailments of the LTPPAs with ComEd or AIC for 2017-2018. *See* IPA Plan at 5-6 (Action Plan items 3 and 6).

policy, with the caveat that these purchases would be secondary to the already contractually committed use of the hourly ACP funds for the DG procurement as discussed below. The purchase of curtailed RECs from the LTPPAs would take precedence over new DG procurements undertaken in 2017.

However, the Renewables Suppliers submitted two other comments on the Draft Plan relating to the proposed 2017 DG REC procurement which have not been adopted in the filed IPA Plan. The IPA Plan should be revised to incorporate these two additional points.

A. First, the IPA Plan should specify that the first (or “Spring”) 2017 DG REC procurement event will not be held until after ComEd and AIC file their March 2017 load forecast updates and it is determined whether or not curtailments of the LTPPAs for ComEd or AIC will be necessary.² This timing will enable the IPA to proceed with and size the first DG REC procurement knowing whether each electric utility’s Hourly ACP Funds need to be used to purchase curtailed LTPPA RECs in 2017-2018. Further, if the March 2017 load forecast updates indicate a need for LTPPA curtailments in any of the succeeding five years (2018-2019 through 2021-2022), this would inform the IPA’s determination of the size of the 2017 DG REC procurements (which, as noted, must be pursuant to five-year contracts). Although the IPA Plan observes in a footnote that “because the first of the two DG procurements will almost certainly occur after the March load forecasts are received, those load forecasts will be used to inform a DG procurement budget” (IPA Plan at 3, note 9), the IPA has stopped short of stating that the first 2017 DG REC procurement event will not be held until after the March 2017 load forecasts are submitted and a final determination is made as to whether or not curtailments of the LTPPAs for 2017-2018 are required. Scheduling the first 2017 DG REC procurement after the March 2017 load forecast updates are filed is a common sense precaution. The Commission should direct that the first 2017 DG REC procurement will not be held until the utilities’ March 2017

² The Renewables Suppliers understand that, as in past years, a utility’s March 2017 load forecast update will be adopted as the load forecast to be used for purposes of the 2017-2018 Delivery Year only if it is the consensus of the IPA, the Commission Staff, the Procurement Monitor and the applicable utility that the March 2017 update should be used. If there is no such consensus, the utility’s July 2016 load forecast will continue to be used. IPA Plan at 5 (Action Plan item 3).

load forecasts are submitted and a final determination is made as to whether curtailment of the LTPPAs with ComEd or AIC is required for 2017-2018.³

B. Second, the IPA Plan (or the Commission's order) should specify how, if it is determined that LTPPA curtailments are needed in 2017-2018, the amount of the utility's accumulated Hourly ACP Funds to be allocated to the purchase of curtailed LTPPA RECs (and therefore not available to fund the 2017 DG REC procurements) should be determined. In its Docket 13-0546 Order on Rehearing, the Commission ruled that curtailed LTPPA RECs should be purchased by the utility, using its accumulated Hourly ACP Funds, at prices equal to the Contract Prices under the LTPPAs less the Day Ahead Hourly Locational Marginal Prices ("DAH-LMPs"). Docket 13-0546, Order on Rehearing, at 57 (Finding (4)). While the Contract Price under each LTPPA is known, the DAH-LMPs are determined throughout the year. Therefore, at the start of the year (or any other time period), it is not possible to calculate with certainty what the purchase price will be for curtailed LTPPA RECs in the ensuing period. To take this uncertainty into account, the IPA Plan (or the Commission's order) should specify that the amount of the utility's accumulated Hourly ACP Funds to be allocated to purchasing curtailed LTPPA RECs during 2017-2018 should be 110% of the estimated amount needed to purchase curtailed LTPPA RECs in 2017-2018.

C. The Renewables Suppliers have a third objection relating to the prioritization of accumulated Hourly ACP Funds to purchase DG RECs versus to purchase curtailed LTPPA RECs. The IPA Plan makes references to Hourly ACP Funds having been "committed" and "contractually committed" to the purchase of DG RECs procured in the 2015 and 2016 DG REC procurement events. See, e.g., IPA Plan at 6 (Action Plan item 8), referring to "the total dollar

³ This "scheduling" issue would be eliminated if the Commission were to determine now, based on ComEd's and AIC's July 2016 load forecasts that are included in the IPA Plan, that no curtailments of the LTPPAs are required in 2017-2018. The Renewables Suppliers are not objecting to the continued use of the March 2017 load forecast updates for this purpose, but are simply pointing out that their objection concerning the scheduling of the Spring 2017 DG REC procurement emanates from the use of the March 2017 load forecast updates to determine if curtailments of the LTPPAs are necessary.

value committed from prior distributed generation REC contracts;” and 96, referring to “the already contractually committed use of the hourly ACP funds for the DG procurement.” The IPA should clarify what it means by the “already *contractually committed* use of the hourly ACP funds for the DG procurement.” For example, based on review of the form contract documents for the ComEd 2016 DG REC procurement,⁴ the Renewables Suppliers are unaware that the utility’s accumulated Hourly ACP Funds have been pledged or otherwise committed in the DG REC purchase contracts as the source of payment for the contracted DG RECs. Therefore, the Renewables Suppliers question whether stating that the utility’s Hourly ACP Funds have been “contractually committed” to pay for the DG RECs procured in the 2015 and 2016 procurement events is an accurate characterization.

To be clear, the Renewables Suppliers acknowledge that the Commission approved the IPA’s proposals, in the 2015 and 2016 IPA Plans, that the utilities use accumulated Hourly ACP Funds to purchase DG RECs. The question the Renewables Suppliers are raising is whether the Hourly ACP Funds have been committed or pledged in the DG REC procurement contracts as the source of, or security for, payment for the DG RECs.

Further, use of accumulated Hourly ACP Funds to pay for DG RECs should not be given priority over use of the accumulated Hourly ACP Funds to purchase curtailed LTPPA RECs. As stated earlier, the Commission established in the Docket 13-0546 Order on Rehearing (relating to the 2014 IPA Plan) that accumulated Hourly ACP Funds should be used to purchase curtailed LTPPA RECs. This determination was based, in part, on substantial evidence that the curtailment of purchases under the LTPPAs and the consequent loss of contracted revenues by the LTPPA suppliers was damaging the ongoing development of renewable energy facilities in Illinois and outside of Illinois to serve the Illinois market. *See* Docket 13-0546, Order on Rehearing, at 3-4, 9-16. The use of accumulated Hourly ACP Funds to purchase DG RECs

⁴ Available at: <https://www.ipa-energyrfp.com/renewable-energy-resources-section/>.

under five-year contracts was proposed and implemented for the first time in the 2015 IPA Plan. The Renewables Suppliers see no reason why payment for DG RECs should be a priority use of accumulated Hourly ACP funds, taking precedence over purchase of curtailed DG RECs, in any future Delivery Year.

If the DG REC purchase contracts entered into in 2015 and 2016 do in fact “contractually commit” the use of accumulated Hourly ACP Funds to pay for the contracted DG RECs, the Renewables Suppliers recognize that those contracts cannot be altered. However, for future DG REC procurements, the purchase contracts should specify that payments on the contracts from Hourly ACP Funds over the five-year contract period are subject to and subordinate to the use of Hourly ACP Funds to purchase curtailed LTPPA RECs, should any curtailments of purchases under the LTPPAs be required during the five-year period. Again to be clear, the Renewables Suppliers recognize that should it be determined that a curtailment of the LTPPAs is needed for 2017-2018, necessitating use of Hourly ACP Funds to purchase curtailed LTPPA RECs, the IPA intends to take this into account in sizing the 2017 DG REC procurements. However, this does not address the possibility of LTPPA curtailments in one or more of the ensuing four years and the possibility that in a future year, the Hourly ACP Funds would be insufficient both to purchase the curtailed LTPPA RECs and to make payments due under the DG REC contracts.

Indeed, although the ComEd and AIC load forecasts do not show a need for any LTPPA curtailments in the next five years (2017-18 through 2021-22), the IPA proposes to acquire general (utility-scale) wind and solar RECs for ComEd and AIC only under one-year contracts, due to the possibility that curtailments could occur in future years. IPA Plan at 91. If the Commission accepts this perspective, then to be consistent it should also direct that the five-year DG REC contracts specify that payments on the contracts from Hourly ACP Funds over the five-year contract period are subject to and subordinate to the use of the Hourly ACP Funds to

purchase curtailed LTPPA RECs, should any curtailments of purchases under the LTPPAs be necessary during that period.

III. Conclusion

The Renewables Suppliers respectfully request that the Commission adopt the Renewables Suppliers' Objections to the IPA Plan as set forth herein, and that the Commission issue an order in this docket making determinations and issuing directives, including revisions to the IPA Plan, in accordance with these Objections.

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VERIFICATION

Kristian Scornavacca, on oath, states that he is Business Manager for NextEra Energy Resources, LLC, one of the Renewables Suppliers; that he is authorized to make this verification on behalf of the Renewables Suppliers; that he has read the foregoing Objections of the Renewables Suppliers Regarding the Illinois Power Agency’s 2017 Procurement Plan (“Objections”) and is familiar with the matters set forth therein; and that the matters set forth in the Objections are true and correct to the best of his knowledge, information and belief.



[Name]

Subscribed and sworn to before me
this 3rd day of October, 2016.



Notary Public



CERTIFICATE OF SERVICE

The undersigned attorney certifies that he caused copies of the Renewables Suppliers' Objections to the Illinois Power Agency's 2017 Procurement Plan in Docket 16-0453 to be served on the persons shown below by electronic mail on October 3, 2016.

/s/ Owen E. MacBride

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