STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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

THE RENEWABLES SUPPLIERS' REPLY TO RESPONSES TO OBJECTIONS TO THE ILLINOIS POWER AGENCY'S 2017 PROCUREMENT PLAN

The Renewables Suppliers submit this Reply to the Responses of certain parties to the Objections to the Illinois Power Agency's ("IPA") 2017 Procurement Plan.[1] The Renewables Suppliers are replying to the Responses of the IPA, Commission Staff ("Staff"), Commonwealth Edison Company ("ComEd"), Ameren Illinois Company ("AIC"), the Environmental Law and Policy Center ("ELPC"), and the Illinois Solar Energy Association ("ISEA"). The issues addressed in this Reply relate to the IPA's proposed use of the utilities' funds accumulated from applying the Alternative Compliance Payment rate to sales to customers taking service on hourly pricing tariffs ("Hourly ACP Funds") to fund procurement of renewable energy credits from distributed generation resources ("DG RECs") in 2017 (Section 8.3, and Action Plan item 8 at page 6, of the IPA Plan).

I. Scheduling of the Initial 2017 DG REC Procurement Event

In their Objections, the Renewables Suppliers recommended that the IPA Plan be modified to specify that the initial proposed 2017 DG REC procurement will not be held until after the utilities submit their March 2017 load forecast updates and it can be finally determined if curtailments of the long-term renewable energy resources power purchase agreements ("LTPPAs") will be required in the 2017 delivery year, thereby necessitating use of Hourly ACP

[1] The Renewables Suppliers are: (1) 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. (2) Invenergy LLC and its affiliated project companies Grand Ridge Energy IV LLC and Invenergy Illinois Solar I LLC, and (3) NextEra Energy Resources, LLC and its subsidiary project company FPL Energy Illinois Wind, LLC.

Funds to purchase curtailed LTPPA RECs.[2] Renewables Suppliers' Objections ("RS Objections") at 3-4 (Objection A). While the IPA states that it is "unlikely" that the first DG REC procurement will be conducted before March 15, 2017, the IPA continues to resist committing not to hold the first DG REC procurement event until after the load forecast updates are filed. The IPA cites availability of internal and external resources, the timetable for contract development and completion, maximizing bidder participation, and other concerns relating to statutory requirements. IPA Response at 5. However, the IPA provides no explanation of how any of these considerations could necessitate holding the initial DG REC procurement event earlier than late March-early April. Given that the presence or absence of LTPPA curtailments would impact the amount of the accumulated Hourly ACP Funds that the IPA can budget for the DG REC procurements, it would be prudent for the IPA not to conduct the initial 2017 DG REC procurement until the load forecast updates are filed and it is known whether LTPPA curtailments will be needed for either utility. The Commission should direct that the IPA Plan be modified to specify that the initial (and potentially only) 2017 DG REC procurement shall not be held until after the utilities' March 2017 load forecast updates are filed and the final determination is made as to whether curtailments of either utility's LTPPAs are needed in the 2017 delivery year.

II. Determining the Amount of Hourly ACP Funds to be Allocated to the Purchase of Curtailed LTPPA RECs, Should Curtailments be Needed

In their Objections, the Renewable Suppliers recommended that the IPA Plan (or the Commission's order) should specify how, if it is determined that LTPPA curtailments are needed for a utility for the 2017 delivery year, the amount of the utility's accumulated Hourly ACP Funds to be allocated to the purchase of curtailed LTPPA RECs will be determined. The Renewables Suppliers proposed that, to account for uncertainty in forecasting energy prices, the

[2] The IPA proposes to conduct two DG REC procurement events in 2017. Staff has recommended that only a single DG REC procurement event be held. Staff Objections at 5.

amount allocated for this purpose should be 110% of the estimated amount needed to purchase the curtailed LTPPA RECs in 2017-2018. RS Objections at 4 (Objection B). The IPA, in its Response, states that it does not object to this request for clarification. IPA Response at 5.

Staff also agrees that the IPA Plan or the Commission's order should specify how to determine the amount of the utility's accumulated Hourly ACP Funds to be allocated to the purchase of curtailed LTPPA RECs. However, Staff but requests more information on (1) how the amount needed to purchase curtailed LTPPA RECs would be estimated, and (2) why 110% is the appropriate uncertainty adjustment factor. Staff Response at 3-4. As to the first question, there are three components to the calculation: (i) the number of contracted RECs that will be curtailed in each LTPPA, based on the percentage curtailment, which will be a known number for each LTPPA; (ii) the contract price in each LTPPA, which is known to the IPA and the utility; and (iii) the day-ahead hourly locational marginal prices ("DAH-LMP") throughout the year, which are not known at the start of the year. For this third value, an appropriate published forward or futures price index that provides monthly electricity price values for the delivery year in the ComEd or AIC zone, as applicable to the LTPPA, should be used. With these values, the utility and/or the IPA can calculate the estimated amount needed to purchase curtailed RECs during the 2017 delivery year.

As to Staff's second question, the Renewables Suppliers do not have a mathematical, statistical, or other technical basis for proposing that the estimated amount, calculated as described above, be increased by 10% (rather than 5%, 15% or any other number) to account for uncertainty in forecasting future DAH-LMPs during the delivery year. The Renewables Suppliers have simply proposed a 10% factor as a modest adjustment to the estimate to account for this uncertainty. The Renewables Suppliers note that the IPA, in its Response, states that it "believes that 110% constitutes a reasonable amount." IPA Response at 5. Staff's Response seems to indicate that Staff recognizes, in principle, the need to make provision for uncertainty in estimating the amount of Hourly ACP Funds that would be needed to purchase curtailed LTPPA RECs, in accordance with the Commission's Order on Rehearing in Docket 13-0546, should a curtailment be needed. Adoption of the Renewables Suppliers' proposal should not depend on whether there is a mathematical or statistical basis for setting the uncertainty adjustment factor at 10%. Further, if a curtailment of a utility's LTPPAs proves to be necessary for the 2017 delivery year, based on the utility's March 2017 load forecast update, and the amount of Hourly ACP Funds set aside to purchase curtailed LTPPA RECs proves to be higher than actually required, the difference will still be held by the utility and can be used to purchase RECs in a subsequent delivery year.

III. Prioritization of Hourly ACP Funds for Use in Purchasing DG RECs versus Purchasing Curtailed LTPPA RECs

In their Objections, the Renewables Suppliers questioned the statement in the IPA Plan that the utilities' accumulated Hourly ACP Funds have been "contractually committed" to the purchase of DG RECs in contracts entered into in 2015 and 2016. The Renewables Suppliers stated that based on review of the form contracts for the ComEd 2016 DG REC procurement, they saw no provisions by which the accumulated Hourly ACP Funds were pledged or otherwise committed in the DG REC purchase contracts as the source of payment for the contracted DG RECs. RS Objections at 4-5 (Objection C).

In their Responses, neither the IPA, nor ComEd, nor AIC, nor Staff, identified any provisions in the DG REC procurement contracts by which the utility's accumulated Hourly ACP Funds have been contractually pledged or committed as the source of payment for the contracted DG RECs. Therefore, based on the information in the record, the Renewables Suppliers are correct in observing that the accumulated Hourly ACP Funds are not "contractually committed" to the purchase of the DG RECs procured in 2015 and 2016.

Nevertheless, the IPA, Staff, and ComEd each contests the Renewables Suppliers' position that 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, should there be insufficient funds for both purposes.[3] Their arguments are not persuasive. ComEd cites a page (p. 60; *see* ComEd Response at 8) from the Commission's Order on the 2016 IPA Plan (Docket 15-0541) which is a description of the IPA's proposal to purchase DG RECs, not a Commission determination, and in any event does not state that Hourly ACP Funds will be contractually committed or pledged to payment for DG RECs, without regard to other potential uses of these funds. The same can be said about the IPA's reference to prior Commission orders. IPA Response at 5. Further, the use of Hourly ACP Funds to purchase curtailed LTPPA RECs is *also* a directive in a Commission order. The IPA argues that there is an "immutable" statutory obligation for the utilities to purchase DG RECs (*Id*. at 3), but there is also a statutory obligation for the utilities to purchase renewable energy resources (75% of which are to come from wind generation) in accordance with the Renewable Portfolio Standard ("RPS"). 20 ILCS 3855/1-75(c)(1).

The Renewables Suppliers note the following chronology:

- The LTPPAs were entered into in 2010 in a procurement event conducted pursuant to the IPA Plan approved in Docket 09-0343, to procure renewable energy resources in compliance with the RPS, with the purchases to be funded from the Renewable Resources Budget ("RRB"). [4]

- In the 2013-2014 and 2014-2015 delivery years, it was necessary to curtail purchases under the ComEd LTPPAs due to shortfalls in the RRB.

- In its Order on Rehearing in Docket 13-0546, the Commission directed that in the event of a curtailment of a utility's LTPPAs, the utility's accumulated Hourly ACP

[3] AIC states that the terms of existing DG REC contracts should not be altered, but takes no position regarding the Renewables Suppliers' position that future DG REC contracts should include a provision to reduce payments under a scenario where the LTPPAs are curtailed and the Hourly ACP Funds are not sufficient to cover the proportional curtailment of the LTPPAs. AIC recommends that the IPA develop and evaluate several options for consideration regarding this issue. AIC Response at 2.

[4] The IPA speculates that "curtailment risk may have been priced into bids made for LTPPAs." IPA Response at 6 n. 4. This speculation ignores the fact that under the statute, bids could not be accepted that "exceed[ed] benchmarks based on market prices for renewable energy resources in the region." 20 ILCS 3855/1-75(c)(1). Thus, any attempt by a bidder to include a curtailment risk premium that pushed its bid price above the market price would have been trumped by the benchmarks.

Funds should be used to purchase the curtailed LTPPA RECs.[5]

- Thereafter, in its 2015 and 2016 P:rocurement Plans, the IPA proposed to purchase DG RECs under 5-year contracts using the utility's accumulated Hourly ACP Funds, rather than the RRB, as the payment source for the DG RECs.

Thus, the IPA, specifically to avoid the risks associated with funding REC purchase contracts through the RRB, which had resulted in curtailments of the LTPPAs, chose to fund DG REC purchases from the funding source that the Commission had already ordered be used to purchase LTPPA RECs in the event of a curtailment. In light of this history, there is no reason why the use of the utilities' Hourly ACP Funds to purchase contracted DG RECs should be given priority over the use of the Hourly ACP Funds to purchase curtailed LTPPA RECs.

In any event, even if the Commission concludes that the DG REC contracts entered into in 2015 and 2016 have, on some basis, a priority claim on the utility's Hourly ACP Funds over the use of these funds to purchase curtailed LTPPA RECs in accordance with the Docket 13-0546 Rehearing Order, there is no reason for this priority to continue with respect to future DG REC procurements, including the procurements proposed for 2017 in the IPA Plan. Staff asserts that including curtailment provisions in future DG REC contracts would make them less attractive to potential bidders and potentially deter bids or increase bid prices (Staff Response at 7), but, as noted above, the Commission directed that Hourly ACP Funds be used to purchase curtailed LTPPA RECs based on evidence that the LTPPA curtailments and consequent losses of contracted revenues by the suppliers were adversely impacting the development of renewable energy resources in and for Illinois.

Thus, a curtailment provision should be included in the DG REC procurement contracts entered into in 2017 and any future years. *See* ComEd Response at 9; AIC Response at 2. At a minimum, as proposed by AIC, the IPA should be directed to develop and evaluate several

[5] As pointed out in the RS Objections, the Commission made this determination based on substantial evidence that the curtailment of purchases under the LTPPAs and the consequent loss of contracted revenues by the LTPPA suppliers were damaging the ongoing development of renewable energy facilities both in Illinois and outside of Illinois to serve the Illinois market. RS Objections at 5.

options for consideration to address this issue and to make a recommendation to stakeholders and the Commission. AIC Response at 2.

IV. Ten-Year versus Five-Year DG REC Procurements

In their Response to Objections, the Renewables Suppliers opposed Staff's recommendation that the IPA procure DG RECs in 2017 pursuant to both 5-year contracts and 10-year contracts, rather than pursuant only to the statutory minimum 5-year contract term as proposed by the IPA. RS Response at 2. The Renewables Suppliers note that ELPC and the ISEA also oppose the Staff recommendation. ELPC Response at 3-4 (explaining that adding 10-year contracts "risks further complicating an already complex procurement" and could actually dim bidder interest); ISEA Response at 3 (explaining that doubling the length of the contractual delivery period "may hamper adoption of solar" and cause confusion in the market and "trepidation in bidding"). The IPA does not expressly oppose the Staff recommendation, but it:

> . . . cautions that a longer contract term may not necessarily spur additional participation. Additionally, through locking in purchase requirements of RECs from DG systems over a longer period of time, Staff's proposal could have the unintended consequence of stifling efforts to develop new DG systems in future years, as longer obligations would continue to constrain the available budget well into the future. (IPA Response at 7.)

Based on the record, the Renewables Suppliers continue to recommend that the 2017 DG REC procurement or procurements be limited to 5-year contracts.

Respectfully submitted,

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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 Renewables Suppliers' Reply to Response to Objections to the Illinois Power Agency's 2017 Procurement Plan ("Reply") and is familiar with the matters set forth therein; and that the matters set forth in the Reply are true and correct to the best of his knowledge, information and belief.

Kristian Scornavacca

Subscribed and sworn to before me
this 31 day of October, 2016.

Kimberly McKay
Notary Public

KIMBERLY M. MCKAY
Notary Public - State of Florida
My Comm. Expires Feb 13, 2017
Commission # EE 874680

CERTIFICATE OF SERVICE

The undersigned attorney certifies that he caused copies of the Renewables Suppliers' Reply to Response to 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 31, 2016.

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