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	)	

RENEWABLES SUPPLIERS' BRIEF ON EXCEPTIONS
<u>TO THE ADMINISTRATIVE LAW JUDGES' PROPOSED ORDER</u>

The Renewables Suppliers submit this Brief on Exceptions to the Administrative Law Judges' Proposed Order ("ALJPO") regarding the Illinois Power Agency's ("IPA") proposed 2017 Electricity Procurement Plan ("IPA Plan").[1] The Renewables Suppliers take exception to the ALJPO's conclusions on two topics:

(1) The date for the IPA's first proposed 2017 procurement of RECs from distributed generation ("DG") resources ("DG RECs") (ALJPO §IV.A.8, pp. 26-27). The Commission should adopt the Renewables Suppliers' proposal that the first 2017 DG REC procurement event should not be held until after the utilities' March 2017 load forecast updates are received and it is determined whether any curtailments of the utilities' long-term bundled renewables resources contracts ("LTPPAs") will be necessary in the 2017-2018 Delivery Year. (Exception No. 2 below.)

(2) Subordination of payments to DG REC providers from the utilities' Hourly ACP Funds in future years to the use of the Hourly ACP Funds to purchase curtailed LTPPA RECs (should curtailments be needed), in accordance with the Commission's determination in the Order on Rehearing in Docket 13-0546 (ALJPO §IV.A.8, pp. 26-27).[2] The Commission should adopt the Renewables Suppliers' proposal that DG REC procurement contracts should specify that payments on the DG REC contracts from the utilities' Hourly ACP Funds are subordinate to the use of the Hourly ACP funds to purchase curtailed LTPPA RECs. (Exception No. 3 below.)

In addition, the Renewables Suppliers propose a correction to the ALJPO's summary of their

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[1] The Renewables Suppliers are comprised of: 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 ("LTPPA") 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").

[2] Hourly ACP Funds are the funds accumulated by applying the Alternative Compliance Payment ("ACP") rate to the utility's kwh sales to its customers taking service on the utility's hourly pricing tariff.

position in §IV.A.2 on page 17. (Exception No. 1 below.)

I. <u>Exception No. 1</u>

In the first paragraph of §IV.A.2, "Renewables Suppliers' Position" (p. 17), the ALJPO states: "The Renewables Suppliers object to the 2017 Plan's proposed use of the utilities' hourly ACP Funds to procure DG RECs. RS Cmnts. At 1." This sentence is not a correct description of the Renewables Suppliers' position. The Renewables Suppliers have concerns about specific aspects of the proposed use of the utilities' Hourly ACP Funds to procure DG RECs, as detailed in their Objections[3] and in Exceptions 2 and 3 below, but they are not objecting to the use *per se* of Hourly ACP Funds to purchase DG RECs in 2017. Further, nothing on page 1 of the RS Objections supports the ALJPO's statement.

<u>Proposed Replacement Text for the ALJPO</u>

The last sentence of the first paragraph in §IV.A.8 (p. 17) of the ALJPO should be deleted and replaced with the following text:

> <u>The Renewables Suppliers object to certain aspects of the 2017 Plan's proposed use of the utilities' Hourly ACP Funds to procure DG RECs. RS Cmnts. at 2.</u>

II. <u>Exception No. 2</u>

The IPA proposes to conduct two procurement events in 2017 for 5-year contracts for DG RECs, to be funded from the utilities' existing accumulated balances of Hourly ACP Funds. The IPA Plan recognizes that if it were to be determined that a curtailment of the LTPPAs is needed for the 2017-2018 Delivery Year, for either utility, in order to stay within the statutory rate caps for procurement of renewable resources (20 ILCS 3855/1-75(c)(2)), the utility will use its accumulated Hourly ACP Funds to purchase curtailed RECs from its LTPPA suppliers,[4] and the budget for procurement of DG RECs for that utility will be reduced by the amount of its

[3] Objections of the Renewables Suppliers Regarding the Illinois Power Agency's 2017 Procurement Plan ("RS Objections").

[4] This is in accordance with the Commission's Order on Rehearing in Docket 13-0546, concerning the IPA's 2014 procurement plan ("13-0546 Rehearing Order").

accumulated Hourly ACP Funds needed to purchase the curtailed LTPPA RECs during the 2017-2018 Delivery Year. IPA Plan at 6 (Action Plan item 8) and 95-96. Further, the load forecast updates submitted by AIC and ComEd in March 2017 will be used to determine if curtailments of either utility's LTPPAs are needed in the 2017-2018 Delivery Year. IPA Plan at 6 (Action Plan item 6.) There does not seem to be any disagreement as to the foregoing points.

In light of the foregoing, the Renewables Suppliers made the sensible proposal that the initial 2017 DG REC procurement should not be held until <u>after</u> the utilities' March 2017 load forecast updates are submitted and the determination is made, based on the forecast updates, as to whether curtailments of either utility's LTPPAs will be needed in 2017-2018 to keep the cost of renewable resources within the statutory rate cap. This determination in turn will define what amount of the utility's accumulated Hourly ACP Funds can be budgeted for the 2017 DG REC procurements. Scheduling the initial DG REC procurement after the March 2017 load forecast updates are submitted eliminates the risk that the DG REC procurement is sized and conducted based on an assumed amount of available Hourly ACP Funds, but a portion of those Hourly ACP Funds are then needed to purchase curtailed LTPPA RECs. *See* ALJPO at 17-18.

The IPA, however, opposed the Renewables Suppliers' proposal. The IPA argued that it schedules procurement events based on the availability of its internal and external resources, the timetable for contract development and completion, maximizing bidder participation, and other (unspecified) concerns relating to meeting statutory requirements at the lowest total cost over time. ALJPO at 25. However, assuming timely submission of the utilities' March 2017 load forecast updates, the first 2017 DG REC procurement could presumably be held as early as late March or early April 2017, and the IPA could begin planning and preparation work for the procurement prior to the scheduled procurement event date. The IPA provided no explanation of how any of the considerations it cited necessitate holding the initial 2017 DG REC procurement event earlier than late March/early April 2017. Despite this lack of explanation from the IPA, the ALJPO declines to adopt the Renewables Suppliers' proposal, stating simply that it "finds persuasive the IPA's statement that procurements are scheduled and conducted based on the availability of internal and external resources, the timetable for contract development and completion, maximizing bidder participation, and other concerns related to meeting statutory requirements at the lowest total cost over time." ALJPO at 26-27.

The ALJPO also notes that "all parties seem to agree that curtailments are unlikely for 2017-2018, which would render the Renewables Suppliers' proposal unnecessary." ALJPO at 26. The Renewables Suppliers agree that, based on the utilities' July 2016 load forecasts included with the IPA Plan, the need for curtailments of the LTPPAs in the 2017-2018 Delivery Year appears unlikely. However, neither the IPA nor any other party is so confident of this that they are proposing to eliminate the March 2017 load forecast updates and declare that no LTPPA curtailments will be needed in 2017-2018. Rather, the IPA continues to recommend that the March 2017 load forecasts be submitted and used to determine whether there is a need for LTPPA curtailments in the 2017-2018 Delivery Year. In light of this, the initial 2017 DG REC procurement event should not be held until after the March 2017 load forecasts are submitted.

Additionally, the ALJPO notes that "the IPA states that in the event a curtailment is necessary, the IPA could use the RERF [Renewable Energy Resources Fund] to purchase the LTPPA RECs." ALJPO at 26. However, the IPA will not purchase curtailed LTPPA RECs using the pricing formula specified in the Commission's 13-0546 Rehearing Order, but rather would use a different calculation method that results in the LTPPA suppliers not receiving full contractual revenue recovery for curtailed RECs.[5] The pricing formula for curtailed LTPPA RECs adopted by the Commission in the 13-0546 Rehearing Order is: LTPPA Contract Price less the Day-Ahead Hourly Locational Market Price ("DA-LMP"), *i.e.*, the market price of the

[5] As has been generally recognized by the Commission and parties in previous IPA Plan cases, the Commission does not have authority to direct the IPA on how to use the monies in the RERF. *See* IPA Plan at 102 (§8.5).

energy produced by the renewable energy facilities.[6] The calculation used by the IPA to determine the price of RECs in the LTPPAs produces lower (less than 100%) recovery of the contractual revenues under the LTPPAs. *See* 13-0546 Rehearing Order at 4-5, 17-18. (As summarized at p. 24 of the ALJPO, the IPA acknowledges this.) In the 13-0456 Rehearing Order, the Commission adopted the above-described method for calculating the prices at which curtailed LTPPA RECs should be purchased, as proposed by the Renewables Suppliers, not the IPA's calculation method.[7] 13-0546 Rehearing Order at 53-55, 57-58.

The Commission should reject the ALJPO's conclusion and should adopt the Renewables Suppliers' sensible proposal. Given that the presence or absence of LTPPA curtailments will impact the amount of Hourly ACP Funds that the IPA can budget for the 2017 DG REC procurements, it would be prudent not to conduct the initial 2017 DG REC procurement event until the March 2017 load forecasts are submitted and it is determined whether LTPPA curtailments will be needed for either AIC or ComEd in the 2017-2018 Delivery Year. Under the Renewables Suppliers' proposal, the first of the two proposed 2017 DG REC procurement can still be held as early as April 2017. The IPA's reasons for wanting even greater scheduling flexibility are non-specific and do not warrant rejecting the Renewables Suppliers' proposal.

Proposed Replacement Text for the ALJPO

The fifth paragraph in §IV.A.8 of the ALJPO, on page 26, should be revised as follows:

> The Renewables Suppliers also suggest that the spring 2017 DG REC procurement should not be held until the utilities' March 2017 load forecasts are submitted and a final determination is made as to whether curtailment of the LTPPAs for ComEd or Ameren is required for 2017-2018. The Commission ~~declines~~ directs the IPA to adopt this proposal. The Commission notes that under

[6] *See* Renewables Suppliers Reply to Responses to Objections to the Illinois Power Agency's 2017 Procurement Plan ("RS Reply) at 3; 13-0546 Rehearing Order at 53-55, 57-58.

[7] The IPA may point out in reply that it believes it is precluded by the IPA Act from purchasing curtailed RECs using the pricing calculation adopted by the Commission in the Docket 13-0546 Rehearing Order. Regardless, this does not change the fact that the pricing calculation adopted by the Commission in the Docket 13-0546 Rehearing Order provides full contractual revenue recovery for the LTPPA suppliers, whereas the IPA's method for calculating the price at which it would purchase curtailed RECs does not.

> the Renewables Suppliers' proposal, the IPA should be able to conduct the first of its two proposed DG REC procurement events by early April 2017. The Commission ~~finds persuasive~~ notes that the IPA~~'s statement~~ contends that procurements are scheduled and conducted based upon the availability of internal and external resources, the timetable for contract development and completion, maximizing bidder participation, and other concerns related to meeting statutory requirements at the lowest total cost over time. However, the reasons provided do not explain why the IPA needs to be able to conduct the initial DG REC procurement event in January, February or March 2017, and therefore are not persuasive. The Commission places greater importance on the ability to schedule and size the DG REC procurement knowing whether or not any portion of the utilities' accumulated Hourly ACP Funds will need to be used to purchase curtailed RECs during the 2017-2018 Delivery Year. The Renewable Suppliers' proposal is a reasonable and prudent recommendation and is hereby adopted. ~~This is a reasonable approach and will not be modified by the Commission.~~

III. Exception No. 3

As discussed under Exception 2, the utilities' Hourly ACP Funds are the funding source both for the purchase of curtailed LTPPA RECs, should a curtailment be necessary in 2017-2018 or any future year, and for the purchase of DG RECs pursuant to 5-year contracts. The Renewables Suppliers proposed that provisions should be included in contracts for DG RECs entered into in 2017 and any future years specifying that payments on the contracts from Hourly ACP Funds over the 5-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. RS Objections at 5-7. The ALJPO does not adopt this proposal. ALJPO at 26. The Renewables Suppliers take exception to the ALJPO's rejection of this proposal. For the reasons discussed below, the Commission should direct that the contracts for DG RECs entered into in 2017 and future years specify that payments on the contracts from Hourly ACP Funds over the contract period are subject to and subordinate to the use of the Hourly ACP Funds to purchase curtailed LTPPA RECs.

As a starting point, the IPA Plan stated that funds from the utilities' Hourly ACP Funds have been "contractually committed" to the payment for DG RECs under 5-year contracts entered into in 2015 and 2016. IPA Plan at 6 (Action Plan item 8) and 96. The Renewables

Suppliers took exception to this assertion, noting that based on review of the form contracts for the ComEd 2016 DG REC procurement, they saw no provisions that the utilities' Hourly ACP Funds are pledged or otherwise committed as the source of payment for the contracted DG RECs. RS Objections at 4-5. In response, none of the IPA, Commission Staff, ComEd, or AIC identified any provisions in the DG REC contracts that commit the utility's Hourly ACP Funds to payment of the amounts due under the contracts, or even identify the utility's Hourly ACP Funds as the source of payments. RS Reply at 4. The statement in §IV.A.8 (p. 20) of the ALJPO that "The Commission directs that once a DG REC procurement is completed, sufficient hourly ACP funds should be committed to fully fund the resulting contracts" is an acknowledgement (based on the record) that in the 2015 and 2016 DG REC procurements, the utilities' Hourly ACP Funds were <u>not</u> "contractually committed" as the source of payments on the contracts.

Turning to DG REC procurements in 2017 and future years, the ALJPO cites these reasons for rejecting the Renewables Suppliers' proposal: (1) Curtailments of LTPPAs in 2017-2018 are unlikely. (2) If curtailments occur, the IPA could use the RERF to purchased curtailed RECs. (3) by statute, DG RECs must be procured under contracts of at least 5 years duration, therefore "a secure source of funding is necessary." (4) The LTPPAs are primarily funded from the Renewable Resources Budget ("RRB"), not from the Hourly ACP Funds. ALJPO at 26.

With respect to the first reason, the Renewables Suppliers do not disagree, but point out (1) any uncertainty in this regard can be eliminated by adopting the Renewables Suppliers' proposal that the initial 2017 DG REC procurement not be held until after the March 2017 load forecast updates are submitted (Exception 2 above), and (2) since the DG REC contracts must be at least 5 years in duration, the possibility of LTPPA curtailments in 2018-2019 and subsequent years must be taken into account.

With respect to the second reason, as discussed in Exception 2, above, the IPA will not purchase curtailed RECs using the pricing formula specified by the Commission in the 13-0546

Rehearing Order. The IPA will use a different pricing formula that does not provide full contractual revenue recovery for the LTPPA suppliers.

Moving to the third reason, "a secure source of funding" is certainly desirable for any renewable resources contracts, but this does not provide a justification for giving the DG REC contracts a priority claim over the LTPPAs on the Hourly ACP Funds as a source of payment. Further, the purchases of renewable resources under the LTPPAs is for the purpose of meeting the statutory Renewable Portfolio Standard and is just as much a statutory obligation as the purchase of DG RECs. Moreover, the IPA's assertion that "using hourly ACP funds for DG procurement constitutes the only available pathway to meet an immutable statutory requirement" (see ALJPO at 25) is incorrect; there is no prohibition on purchasing DG RECs using the RRB, where they would be subject to risk of curtailment just like the multi-year LTPPAs.

The Commission should consider 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 RRB.
- 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, to stay within the rate cap.
- 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 Funds should be used to purchase the curtailed LTPPA RECs. 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 adversely impacting the development of renewable energy facilities both in Illinois and outside of Illinois to serve the Illinois market. 13-0546 Rehearing Order at 3-4, 9-16; RS Objections at 5.
- Thereafter, in its 2015 and 2016 Procurement Plans, the IPA proposed, for the first time, to purchase DG RECs under 5-year contracts by 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, elected to fund DG REC purchases from the funding source that the Commission had <u>already</u> ordered be used to purchase LTPPA RECs in the event of a curtailment. This was simply a choice by the IPA, not a statutory mandate, to elevate the interests of one set of REC suppliers over those of another set. In light of this history, there is no reason why use of the utilities' Hourly ACP Funds to purchase DG RECs should be given priority over use of the Hourly ACP Funds to purchase curtailed LTPPA RECs.

With respect to the ALJPO's fourth reason, it is a correct statement, but irrelevant. What is at issue is funding for the purchase of any LTPPA RECs that cannot be funded from the RRB. The Commission directed in the 13-0546 Rehearing Order that the Hourly ACP Funds should be used for this purpose.

Although not cited as reasons for the ALJPO's conclusion on this issue, the IPA argued several other points in opposition to the Renewables Suppliers' proposal.[8] First, the IPA argued that the LTPPAs contained curtailment provisions and that the risk of curtailments "may have been priced into bids made for LTPPAs." IPA Response to Objections at 6 n. 4. This unsupported speculation ignores the fact that under the IPA Act, a bid could not be accepted in the LTPPA procurement event if the bid "exceed[ed] benchmarks based on market prices for renewable energy resources in the region."[9] 20 ILCS 3855/1-75(c)(1). Any bidder contemplating increasing its bid due to the risk of curtailments was confronted with the knowledge that if its bid exceeded the confidential (*i.e.*, not known to the bidders) benchmarks, it would not be accepted. Stated differently, all the winning bids in the LTPPA procurement event were, as required by the IPA Act, at or below "market prices for renewable energy resources in the region" as determined by the procurement administrator, the procurement monitor, the IPA and the Commission.

Second, the IPA contended that the Commission's directive in the 13-0546 Rehearing Order that Hourly ACP Funds should be used to purchase curtailed RECs was a one-time determination solely for purposes of that year's (2014) procurement plan. *See* ALJPO at 24.

[8] As summarized in the ALJPO at 21-23, Staff and ELPC made the same or similar arguments as the IPA.

[9] Section 1-75(c)(1) specifies that the confidential benchmarks are to be determined by the IPA's procurement administrator in consultation with Commission staff, IPA staff, and the procurement monitor, and are subject to review and approval by the Commission.

This assertion is belied by the fact that the Commission, in the 13-0546 Rehearing Order, directed that one aspect of the procedure for using the Hourly ACP Funds to purchase curtailed LTPPA RECs (specifically, the allocation of the Hourly ACP Funds among the LTPPA contracts) should be revisited in the following year's procurement plan case.[10] 13-0546 Rehearing Order at 56. This directive evidences the Commission's intent that the Hourly ACP Funds should continue to be used to purchase curtailed RECs in future years, should there be curtailments. The IPA Plan recognizes that the Commission's directive to use the utilities' Hourly ACP Funds to purchase curtailed LTPPA RECs, should a curtailment be necessary, continues in effect. IPA Plan at 6 (Action Plan item 7) and 95-96.

Third, the IPA argued that the Renewables Suppliers' proposal would "prioritize the limited financial interests of LTPPA holders" over the IPA's ability to use the Hourly ACP Funds to meet statutory RPS targets. *See* ALJPO at 25. But the Commission's determination in the 13-0546 Rehearing Order that the Hourly ACP Funds should be used to purchase curtailed RECs was not based on the "limited financial interests of the LTPPA holders," but rather on public interest considerations, including substantial evidence that the curtailment of purchases under the LTPPAs and the consequent loss of contracted revenues by the LTPPA suppliers was adversely impacting the development of renewable energy facilities in Illinois and outside of Illinois to serve the Illinois market.

As summarized by the Commission in the 13-0546 Rehearing Order, the record in that proceeding indicated that the LTPPA curtailments and the method then being used to implement them was creating uncertainty for renewable energy developers and suppliers as to the reliability of revenue streams from contracts to supply renewable energy in the Illinois market. The evidence showed that this uncertainty could make prospective renewable energy developers unwilling to invest capital and develop new projects within Illinois or to serve Illinois, and could

[10] The IPA Plan acknowledges that this directive continues in effect. IPA Plan at 96 n. 207.

affect their ability to obtain financing for such projects. The evidence indicated that for renewable energy developers, the most crucial factor in determining where to deploy development capital is the ability to obtain certainty of long-term revenue streams over the life of a project. Testimony was received from renewable generation developers that they had stopped project development activities in Illinois due to uncertainties arising from the LTPPA curtailments and the significant revenue losses the curtailments were causing for existing LTPPA suppliers. The Illinois project development activities being suspended or terminated included activities on near-construction-ready projects that already had signed transmission agreements. These developers were instead redirecting their attention and capital to renewable generation project development opportunities in other states. The record showed that, based on American Wind Energy Association data, no new wind farms had been constructed or placed into operation in Illinois since the LTPPA curtailments began, even though there were over 12,000 MW of new wind power generation facilities under construction in other states. Evidence showed that the result of these conditions would be loss of the environmental and economic development benefits of new wind generation projects for Illinois, reduced supplies of renewable energy and RECs, and higher RPS compliance costs, all to the detriment of retail electricity consumers and, more broadly, the public interest in Illinois. *See* 13-0546 Order on Rehearing at 3-4, 9-13.

The Renewables Suppliers submit that, based on the evidence in the Docket 13-0546 Rehearing proceeding, the Commission's decision that the Hourly ACP Funds should be used to purchase curtailed LTPPA RECs was not a decision for that case only, nor was it merely a palliative to the "limited financial interests of the LTPPA holders." Rather, the Commission's decision in the 13-0546 Rehearing Order was intended to eliminate the broad, adverse impacts to Illinois of the LTPPA curtailments, by restoring revenue certainty for the LTPPA suppliers. However, giving new DG REC contracts priority over the LTPPAs with respect to use of the Hourly ACP Funds reintroduces the uncertainties and concerns about the development of new renewable generation in Illinois that the Commission sought to eliminate in the 13-0546 Rehearing Order, and would again discourage new investment in renewable generation facilities in Illinois. This would be contrary to the public interest.

For all of these reasons, the Commission should reject the ALJPO's conclusion and should direct that the contracts for DG RECs entered into in 2017 and future years specify that payments on the contracts from Hourly ACP Funds over the contract period are subject to and subordinate to the use of the Hourly ACP Funds to purchase curtailed LTPPA RECs.

Proposed replacement text for the ALJPO

The third and fourth paragraphs in §IV.A.8 of the ALJPO, on page 26, should be deleted in their entirety and replaced with the following text:

> The Renewables Suppliers propose that the contracts for DG REC contracts entered into in 2017 and future years should contain provisions stating that payments on the contracts from the utility's Hourly ACP Funds over the contract period are subject to and subordinate to the use of the Hourly ACP Funds to purchase curtailed LTPPA RECs, should any curtailments be required during the term of the DG REC contracts. The Renewables Suppliers point out that the Commission determined in the Order on Rehearing in Docket 13-0546, concerning the IPA's procurement plan for 2014, that the utilities' accumulated Hourly ACP Funds should be used to purchase curtailed LTPPA RECs. Subsequently, in connection with the 2015 and 2016 procurement plans, the Commission authorized the use of the Hourly ACP Funds to purchase DG RECs under 5-year contracts. While the Commission continues to agree that it is appropriate to use the utilities' accumulated Hourly ACP Funds as the funding source for the DG REC contracts, the Commission agrees with the Renewables Suppliers that there is no reason that DG REC contracts should have priority over the LTPPAs with respect to use of the Hourly ACP Funds as a funding source. In the Docket 13-0546 Rehearing, the Commission considered evidence that the curtailments of the LTPPAs and the consequent loss of contracted revenues by the suppliers was creating uncertainties in the renewable energy development community with respect to the advisability of making capital investments in new wind generation facilities in Illinois and outside Illinois to serve the Illinois renewables market, and was discouraging such capital investment. Based on this evidence and to address these concerns, the Commission determined that the Hourly ACP Funds should be used to purchase curtailed RECs if curtailment of the LTPPAs is necessary. To give the DG REC contracts priority over the LTPPAs in terms of the use of the Hourly ACP Funds could diminish or undo the remedy the Commission applied in the Docket 13-0546 and again create uncertainties about the advisability of making long-term capital investments in renewable generation facilities in Illinois. Accordingly, the Commission directs that the contracts for DG REC contracts entered into in 2017 and future years

should contain provisions stating that payments on the contracts from the utility's Hourly ACP Funds over the contract period are subject to and subordinate to the use of the Hourly ACP Funds to purchase curtailed LTPPA RECs, should any curtailments be required during the term of the DG REC contracts.

III. 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 Administrative Law Judge's Proposed Order, as set forth herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that he caused copies of the Renewables Suppliers' Brief on Exceptions in Docket 16-0453 to be served on the persons shown below by electronic mail on November 21, 2016.

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