

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>Illinois Power Agency</b>	:	
	:	
<b>Petition for Approval of the IPA's Revised</b>	:	<b>19-0995</b>
<b>Long-Term Renewable Resources</b>	:	
<b>Procurement Plan Pursuant to Section</b>	:	
<b>16-111.5(b)(5)(ii) of the Public Utilities Act.</b>	:	

**ORDER ON REOPENING**

**May 27, 2021**



## Table of Contents

I.	Procedural History .....	1
II.	Petition for Reopening .....	2
III.	Statutory Authority .....	3
IV.	Issues .....	3
A.	Section 3.23.3 .....	3
1.	Accounting .....	3
2.	Methodology .....	4
B.	Section 3.23.4 .....	8
1.	JSPs' Position .....	8
2.	Staff's Position .....	8
3.	IPA's Position .....	8
4.	Commission Analysis and Conclusion .....	9
C.	Section 3.23.6 .....	9
1.	JSPs' Position .....	9
2.	Staff's Position .....	9
3.	IPA's Position .....	9
4.	Commission Analysis and Conclusion .....	10
D.	Section 3.23.7 .....	10
1.	Deferral of Decision.....	10
2.	Changing "Payment Reduction" to "Payment Deferral" .....	13
3.	Updates.....	13
4.	Payment Deferrals .....	15
E.	Section 3.23.8 .....	28
1.	JSPs' Position .....	28
2.	Ameren's Position .....	29
3.	Clean Grid's Position.....	30
4.	Staff's Position .....	31
5.	IPA's Position .....	32
6.	Commission Analysis and Conclusion .....	34
V.	Findings and Ordering Paragraphs.....	35



**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

**Illinois Power Agency** :  
 :  
**Petition for Approval of the IPA's Revised** : **19-0995**  
**Long-Term Renewable Resources** :  
**Procurement Plan Pursuant to Section** :  
**16-111.5(b)(5)(ii) of the Public Utilities Act.** :

**ORDER ON REOPENING**

By the Commission:

**I. PROCEDURAL HISTORY**

On October 21, 2019, the Illinois Power Agency (“IPA”) filed with the Illinois Commerce Commission (“Commission”) a verified Petition for approval of its Revised Long-Term Renewable Resources Procurement Plan (“Revised LTRRPP”). The Commission entered an Order in this matter on February 18, 2020. The IPA filed its Revised LTRRPP in compliance with the Commission’s Order on April 20, 2020, after the onset of the COVID-19 global health pandemic. This filing included a new Section 3.20.1, which demonstrated that if widespread project energization delays resulted from the COVID-19 pandemic, the available renewable portfolio standard (“RPS”) budget for the 2021-2022 delivery year (“DY2021-2022”) could face a funding deficit.

On March 3, 2021, the IPA filed a Petition for Reopening (“Petition”), necessitated by the COVID-19 pandemic. On March 9, 2021, the Solar Energy Industries Association, the Coalition for Community Solar Access, and the Illinois Solar Energy Association (together “Joint Solar Parties” or “JSPs”) filed a Response to the Petition, which generally supported the need to reopen the record in this proceeding. The Commission granted the Petition and reopened this docket on March 18, 2021.

The following Petitions to Intervene were granted by the Administrative Law Judge: National Grid Renewables Development, LLC (“National Grid”), Clean Grid Alliance (“Clean Grid”), and Big River Solar, LLC. The following parties that had previously been allowed to intervene also participated in this proceeding on reopening: Ameren Illinois Company d/b/a Ameren Illinois (“Ameren” or “AIC”); the JSPs; Environmental Law & Policy Center, Vote Solar, and Natural Resources Defense Council (jointly, “Joint NGOs” or “JNGOs”); and Commonwealth Edison Company (“ComEd”). Staff of the Commission (“Staff”) also participated.

Objections were filed on March 25, 2021 by: the JSPs, Ameren, ComEd, National Grid, and Clean Grid. Ameren filed an Errata and Revised Objections on March 31, 2021, which made minor clarifications to its Objections. Responses to Objections were filed on April 8, 2021 by: the Joint NGOs, Staff, Ameren, the JSPs, Clean Grid, National Grid, the

IPA, and ComEd. On April 15, 2021, Replies to Responses were filed by the following parties: the JSPs, Staff, Ameren, the Joint NGOs, the IPA, Clean Grid, and National Grid.

The Administrative Law Judge served a Proposed Order on April 30, 2021. Briefs on Exceptions were filed on May 7, 2021 by the IPA, the JSPs, Ameren, Clean Grid, and National Grid. On May 10, 2021, Clean Grid filed an errata to its Brief on Exceptions. On May 12, 2021, Reply Briefs on Exceptions were filed by the JSPs, Clean Grid, Ameren, the Joint NGOs, Staff and the IPA.

## **II. PETITION FOR REOPENING**

In its Petition, the IPA sought to reopen the docket to approve certain modifications to the IPA's Revised LTRRPP necessitated by: 1) the COVID-19 pandemic, 2) the pandemic's impact on new renewable energy project development timelines; and 3) the impact of those development timeline changes on available RPS funding. The IPA explained that because renewable energy credit ("REC") delivery contracts provide payment only once applicant systems are energized, project energization delays resulting from the pandemic have aggressively shifted projected RPS budget expenses chronologically forward into future delivery years.

The IPA notes that Section 16-108(k) of the Public Utilities Act ("Act") limits the ability to utilize prior years' RPS collections for making those payments up until May 31, 2021, leaving a significantly reduced RPS budget available to meet expenses incurred after that date. 220 ILCS 5/16-108(k). After revising its RPS budget projections based on energization deadline extension requests received from renewable energy project developers, the IPA now projects that contracted RPS expenses for DY2021-2022 will exceed funding available during that delivery year.

To maintain the integrity of the cap contained in Section 1-75(c)(1)(E) of the Illinois Power Agency Act ("IPA Act") on the rate impact of RPS expenditures, DY2021-2022 expenses must be reduced to the level of available funds, thus requiring a reduction in payments for projects under existing contracts. 20 ILCS 3855/1-75(c)(1)(e). As this budget shortfall was unanticipated previously, the Revised LTRRPP projects sufficient RPS funding availability for DY2021-2022 and lacks any proposal for how expenses must be reduced in the case of funding insufficiency. The IPA thus requested that the Commission reopen this proceeding for the limited purpose of approving modifications to the Revised LTRRPP for addressing this funding shortfall. With its Petition, the IPA included proposed modifications to the Revised LTRRPP ("Proposed Language").

In its Petition, the IPA proposed a regime in which certain statutory and policy considerations are accounted for in prioritizing and managing reductions in RPS-related DY2021-2022 expenses. It is as follows:

1. REC delivery contracts and other RPS obligations should continue to be paid in full for at least the first six months of DY2021-2022.
2. By December 31, 2021, the IPA will provide a compliance filing in the instant proceeding updating the status of the RPS budget, outlining the funds available at the conclusion of the 2021 calendar year for use in the remainder of DY2021-2022, and updating the projected expenses for the remainder of the period.

3. The payment reductions under the modifications to the Revised Plan should exempt both the 2010 Long-Term Power Purchase Agreements (“LTPPA”) and the 2015-2017 Utility Distributed Generation (“DG”) procurement expenses.
4. Illinois Solar for All (“ILSFA”) contract expenses should be prioritized, and payments obligated under those REC delivery contracts should not be reduced.
5. The 2021-2022 delivery allocations for ILSFA, inclusive of the \$10 million job training program allocation, should be maintained.
6. Any payment reductions implemented during DY2021-2022 should be prioritized as payments due in the first applicable invoicing cycle of DY2022-2023.

### III. STATUTORY AUTHORITY

Pursuant to Section 16-111.5 of the Act, the Commission is given the following direction regarding its review in this proceeding:

The Commission shall approve the initial long-term renewable resources procurement plan and any subsequent revisions, including expressly the forecast used in the plan and taking into account that funding will be limited to the amount of revenues actually collected by the utilities, if the Commission determines that the plan will reasonably and prudently accomplish the requirements of Section 1-56 and subsection (c) of Section 1-75 of the Illinois Power Agency Act.

220 ILCS 5/16-111.5(b)(5)(ii)(D).

### IV. ISSUES

#### A. Section 3.23.3

##### 1. Accounting

##### a. JSPs’ Position

The Joint Solar Parties recommend that the Commission make explicit that invoices arising out of the quarterly period ending May 31, 2021 - even if issued and paid after June 1, 2021 - would count against the June 1, 2017-May 31, 2021 reconciliation period. JSPs Obj. at 4-5.

##### b. Ameren’s Position

Ameren agrees with the JSPs’ recommendation. Ameren Resp. at 8.

##### c. Staff’s Position

Staff agrees with the IPA that the Commission should confirm that projects that become eligible for REC payments before May 31, 2021, but send invoices on or after June 1, 2021, should count against the reconciliation period ending May 31, 2021.

#### **d. IPA's Position**

In Section 3.23.3, the IPA notes that its analysis “assumes that contracted activity—such as REC deliveries, system energizations, scheduled quarterly payments, or administrative costs—through May 31, 2021 (the sunset date of the rollover period) constitutes expenses associated with DY2020-2021 (or prior delivery years, where appropriate), even if actual payments with those activities occur in June 2021.” Proposed Language at 88. The IPA states that its assumption is based on the Commission’s general approach to reconciliations and basic principles of accrual accounting. According to the IPA, under principles of accrual accounting, costs incurred during a certain window of time but invoiced later are considered allocated within the window in which those costs were incurred. Thus, in applying these principles to the reconciliation of RPS funds, the IPA believes the Commission would consider costs invoiced for contract activity occurring prior to May 31, 2021 (such as a project’s energization) to be allocated within the June 1, 2017 – May 31, 2021 reconciliation period. IPA Resp. at 4.

To provide necessary certainty to all interested parties, and to ensure that actual RPS budget numbers used for payment deferral are accurate, the IPA believes that a clear and affirmative statement from the Commission that this underlying assumption is correct would provide necessary clarity to all parties. IPA Resp. at 5.

#### **e. Commission Analysis and Conclusion**

The Commission clarifies that invoices arising out of the period of time before and through May 31, 2021 count against the reconciliation period ending on May 31, 2021, even though invoicing and payment may take place in a subsequent reconciliation period. No party disagrees with this proposal, it is consistent with Commission practice, and it is adopted.

## **2. Methodology**

### **a. Ameren's Position**

Ameren notes that on page 88 of the Proposed Language, the IPA provides Table 3-26 representing updated forward looking estimates associated with accumulated renewable funds already collected from customers, new renewable funds to be collected from customers, REC contract expenses, set-asides, refunds to customers associated with the reconciliation scheduled to commence in 2021, available alternative compliance payment (“ACP”) funds and the balance of renewable funds at the end of the year. While this information is helpful, Ameren believes what is lacking is a detailed explanation of the methodology used to calculate each of the metrics and more importantly, an explicit description of the methodology for implementation. Ameren Rev. Obj. at 2.

For DY2021-2022, Ameren notes that the updated RPS budget tables in Section 3.23 are IPA estimates, and Ameren believes a better way to establish the maximum expenditures for REC and REC-related expenses is to use actual data as of close of business (“COB”) May 31, 2021. Therefore, Ameren proposes that DY2021-2022 maximum expenditures be calculated in part by multiplying the actual retail load for the year ending May 31, 2021 by \$1.805/megawatt hour (“MWh”) (representing the 2.015% rate cap), with the resulting dollars being the delivery year REC budget cap. Ameren explains that this delivery year budget cap will be added to the balance of legacy ACP



funds as of COB May 31, 2021 (these funds were previously collected from alternative retail electric suppliers and hourly priced customers), minus 2% of the delivery year REC budget cap to account for administrative expense set asides, minus 5% of the delivery year REC budget cap to account for the ILSFA program set asides. Ameren asserts that the collective dollar result of this calculation will become the maximum allowable expenses under Ameren's Rider Renewable Energy Adjustment ("Rider REA") for DY2021-2022. Ameren Rev. Obj. at 2-3.

Ameren notes that the IPA agrees with its recommendation that the budget for DY2021-2022 should be set using actual load data as of COB May 31, 2021. However, the IPA recommends that to maintain consistency with past practice, that an additional decimal place should be used to represent the rate cap. IPA Resp. at 5. Ameren agrees with the IPA's recommendation. Ameren Rep. at 2.

Ameren also requests that the Commission indicate that the revisions to the Revised LTRRPP adopted in this reopening will have no bearing on the renewable budgets beyond DY2021-2022 and a stipulation that those budgets will be determined in the next LTRRPP to be filed by the IPA later in 2021. Ameren Rev. Obj. at 3. The IPA responded that "[a]ssuming Ameren accepts the [IPA]'s proposal to prioritize deferred payments in DY2022-2023, the IPA finds this proposal to be acceptable." IPA Resp. at 18. Ameren agrees with the proposed prioritization of deferred payments for DY2022-2023.

Ameren states that for each invoice cycle during DY2021-2022, Ameren will prioritize REC payments by first using customer receipts associated with DY2021-2022 Rider REA collections (not including the reconciliation refund dollars) and once exhausted, legacy ACP dollars would be utilized for remaining REC payments. Ameren Rev. Obj. at 3. Ameren asserts that this aligns with the Revised LTRRPP filed April 20, 2020 which states that "utility held ACPs should be used in each delivery year after the use of funds collected pursuant to Section 16-108(k)." Revised LTRRPP at 77. Ameren states that the total REC payments for DY2021-2022 will not exceed the maximum allowable expenses for DY2021-2022. Ameren Rev. Obj. at 3.

Ameren notes that the IPA states that they would consider agreeing with Ameren's methodology for the 2021-2022 maximum expenses, so long as it is clear that the uncommitted balance of legacy ACP funds are used in the calculation, in addition to the use of the \$1.8054/MWh rate. Ameren agrees with the IPA's recommendation.

#### **b. ComEd's Position**

ComEd states that it shares Ameren's concerns, and supports Ameren's proposed resolution for DY2021-2022 – namely, to establish the maximum expenditures for REC and REC related expenses using actual data as of COB May 31, 2021. ComEd also agrees with the specific steps and methodology that Ameren proposes to calculate the maximum expenses for DY2021-2022, as well as with the clarification that future budgets will be determined in the next LTRRPP to be filed by the IPA later in 2021. Finally, ComEd concurs with Ameren's proposed prioritization of REC payments for each invoice cycle during DY2021-2022. ComEd Resp. at 3.

### **c. Joint NGOs' Position**

The Joint NGOs argue that all three of Ameren's requests lack the necessary detail to fully understand their implications. Nonetheless, there is a clear principle by which the Commission can evaluate each of these requests: decisions made in approving or modifying the IPA's Proposed Language to account for anticipated budget shortfalls should not fundamentally alter how those budgets are calculated or from which funds contract payments are made. Proposals that do alter how budgets are calculated or from which funds payments are made are beyond the scope of the modifications the IPA proposes and should be considered in the context of a full plan update. JNGO Resp. at 5-6.

The Joint NGOs note that Ameren requests a clarification to the IPA's budget calculation methodology. The Joint NGOs neither find the IPA's budget calculation explanation to be deficient nor oppose further explanation. However, it is worth noting that Ameren's further explanation both raises questions and lacks the actual numbers necessary to understand whether this methodology results in significantly different outcomes than the methodology currently used. Thus, should the Commission find that a more detailed explanation of the IPA's budget calculation methodology is appropriate, the IPA should be directed to develop that explanation, and Ameren's explanation should not be relied upon. JNGO Resp. at 6.

In the second part of its objection, Ameren requests an order from the Commission which indicates that the Proposed Language will have no bearing on the renewable budgets beyond DY2021-2022 and a stipulation that those budgets will be determined in the next LTRRPP to be filed by the IPA later in 2021. The Joint NGOs do not believe that the Proposed Language makes any changes to the utility budgets that will ultimately be available for DY2021-2022. The Proposed Language does provide updated estimates of the DY2021-2022 budgets, but those estimates do not change what the budgets will be. By law, those budgets are determined based on the rate cap and the prior delivery years' load. The Joint NGOs recommend that the Commission reject this request. JNGO Resp. at 6-7.

Finally, in the third part of its objection, Ameren appears to propose a change to the methodology by which it pays out REC contracts. As the Joint NGOs understand it, Ameren proposes to use funds collected pursuant to Section 16-108(k) only to the extent customer receipts already exist at the time a contract is due and not based on anticipated receipts for the full delivery year. Because REC contract payments are lumpier across the year than customer receipts, this would have the effect of driving a faster drawdown of ACP funds and would ultimately force more payment deferrals than are already anticipated under the calculations in the IPA's Proposed Language. This proposal is counter to the plain language of Section 16-108(k) of the Act which refers to funds collected in the context of "delivery years" and counter to the April 20, 2020 Revised LTRRPP's statement that "utility-held ACPs should be used in each delivery year after the use of funds collected pursuant to Section 16-108(k)." Revised LTRRPP at 77. The Commission should reject this proposal. JNGO Resp. at 7.

**d. Staff's Position**

Staff notes the Commission may want more detailed information, but it is not clear to Staff what the benefits would be for instituting the accounting practices at this time. Therefore, Staff initially found the next LTRRPP to be the more opportune time to implement Ameren's proposed revisions. Staff Resp. at 8. Staff notes that Ameren's proposed change imposes an obligation on the IPA, and the IPA states qualified support for providing the additional information. Staff Reply at 5. Therefore, Staff does not oppose IPA's approach to alter its method and calculations of certain metrics, subject to the IPA's condition for calculating available funds. Staff Reply at 5.

Staff notes that actual data should provide a more accurate view of the state of funds available for paying for RECs, but it was not clear how much more accurate that information is. Staff Resp. at 9. Based upon a review of the IPA's Response, Staff agrees with IPA's method to establish available funds for the remainder of 2021. Staff agrees that it will provide a more accurate estimate. Staff Rep. at 6.

With respect to AIC's proposal that the Commission state that this reopening will not impact the next LTRRPP budgets, Staff indicates that while the Commission may want to keep the two plans' budgets separate, it is not clear to Staff how or what this recommendation would accomplish. The Commission may not want to commit to such a directive at this time. Doing so might complicate its ability to make decisions about subsequent LTRRPPs. Staff Resp. at 9.

Staff notes that the IPA states that the budget for delivery years after 2021-2022 is to be determined by information from the prior delivery year and a rate impact multiplier. Thus, Staff opines, there is little reason for the Commission to address this issue. In addition, the allocation of funds is also going to be established in the next LTRRPP, which may be impacted by current decisions. Staff recommends that the Commission decline to amend the Proposed Language on this issue.

**e. IPA's Position**

The IPA explains that budget estimates are presented in the Proposed Language because the IPA does not have the actual data from the utilities. The IPA agrees with Ameren that the budget for DY2021-2022 will be set using actual load data as of COB May 31, 2021. Additionally, to maintain consistency with past practice, the IPA recommends using an additional decimal place to represent the rate cap. IPA Resp. at 5-6.

The IPA notes that Ameren additionally proposes that the delivery year budget cap will be added to the balance of legacy ACP funds as of COB May 31, 2021, and that this figure, minus administrative expenses and ILSFA set asides, will become the maximum allowable expense under its Rider REA for DY2021-2022. The IPA is agreeable to Ameren's methodology for the 2021-2022 maximum expenses, so long as it is clear that "the uncommitted balance of legacy ACP funds" are used in the calculation (in addition to the use of the \$1.8054/MWh rate). IPA Resp. at 6.

Ameren also requests that the Commission order that the Proposed Language will have no bearing on the renewable budgets beyond 2021-2022 and that future years' budgets will be determined by the next revised LTRRPP, which is to be filed later this

year. Assuming Ameren accepts the IPA's proposal to prioritize deferred payments in the 2022-2023 delivery year, the IPA finds this proposal to be acceptable.

#### **f. Commission Analysis and Conclusion**

Several issues appear to have been resolved by the parties. Ameren seems to have agreed to the use of an additional decimal point in the calculation of the budget cap. No party appears to object to the use of actual date from the COB May 31, 2021. Also, Ameren and the IPA appear to be in agreement regarding the calculation of the maximum allowable expense under Ameren's Rider REA.

Regarding the question of whether the Commission should explicitly state that any decisions made in this Order and any modifications to Revised LTRRPP do not impact future LTRRPPs, the Commission agrees with the Joint NGOs that this change is unnecessary. The budget for delivery years after DY2021-2022 is to be determined by information from the prior delivery year and a rate impact multiplier, and the Commission, therefore, declines to adopt Ameren's proposal. The Commission will not make a finding at this time.

### **B. Section 3.23.4**

#### **1. JSPs' Position**

The Joint Solar Parties originally recommended that the Commission modify the IPA's proposed revisions to delete Section 3.23.4 in its entirety. According to the JSPs, proposed Section 3.23.4 explains the Commission's process to curtail certain numbers of RECs from the 2010 LTPPAs in past IPA procurement plans. The JSPs note that the Commission process, with regard to the 2010 LTPPA curtailment, involved contract interpretation, rather than as here, an amendment. JSPs Obj. at 5-6.

The Joint Solar Parties no longer recommend full removal of this section. Instead, the JSPs recommend either that the Commission adopt the replacement language or make clear in this Order the purpose of this docket (i.e. to amend the REC contracts rather than to interpret) and that the specific language differences mean curtailment is not an option. JSPs Reply at 4.

#### **2. Staff's Position**

Staff does not agree with the JSPs' proposed modification to delete Section 3.23.4. Staff states that Section 3.23.4 will be helpful to the Commission as background on the issue at hand. The section contains a helpful discussion of some of the key differences between the current situation and the 2010 LTPPAs. The Commission should reject the JSPs' proposed modification. Staff Resp. at 4-5.

#### **3. IPA's Position**

The IPA disagrees with the recommendation of the Joint Solar Parties to delete this entire section of the IPA's Proposed Language. The IPA believes this particular section is necessary to demonstrate why the current RPS budget situation cannot be resolved in a manner akin to the seemingly similar LTPPA curtailments. Specifically, the IPA notes that parties that were already familiar with the RPS prior to the Future Energy Jobs Act ("FEJA") but may not be as involved with the workings of the Adjustable Block Program ("ABP") and ILSFA may question why the IPA is suggesting a prioritization of

payments and a payment deferral process, rather than curtailing the contracts as was done in the past—and the IPA received numerous inquiries to this effect. By offering this information as distinguishing precedent through the inclusion of Section 3.23.4, the IPA can provide context surrounding the curtailment of prior contracts, explain how another RPS budget shortfall was treated in the past, and demonstrate that the prior tactic of simply curtailing contracts is neither a viable or reasonable solution in the instant case.

#### **4. Commission Analysis and Conclusion**

The Commission declines to delete Section 3.23.4 as the JSPs originally proposed. The Commission finds that the explanations contained therein are helpful to both the Commission and anyone not familiar with the historical workings of the RPS. The JSPs, in their Reply, now propose that Section 3.23.4 not be deleted, but rather be clarified to state that no party is suggesting a curtailment in this proceeding and curtailments are not being considered. The Commission finds that this proposal was made too late, and no party has had an opportunity to respond.

#### **C. Section 3.23.6**

##### **1. JSPs' Position**

The Joint Solar Parties strongly agree with the IPA's analysis opposing clawbacks of payments made under REC contracts and note that the analysis appears to be superfluous because no party sought a clawback. JSPs Obj. at 6.

The Joint Solar Parties appreciate the IPA's and Staff's position that the analysis rejecting clawbacks has value, but the JSPs highlight that regular litigants before the Commission are not the only audience for the Revised LTRRPP. They posit that mentioning clawbacks in the LTRRPP might give a necessary party the incorrect impression that—no matter how it is framed or concluded—clawbacks are a legitimate option. The Joint Solar Parties note the IPA's stated openness to further clarifying language to address that no party has actually sought clawbacks and recommend language to make clearer that clawbacks were not requested by any party, and the LTRRPP merely sets up the issue to reject it. JSPs Reply at 4-5.

##### **2. Staff's Position**

Staff states that it sees value in preserving the IPA's statutory analysis and therefore does not agree with the JSPs' objection. Staff Resp. at 5. After reviewing the IPA's argument, Staff still supports inclusion of the statutory analysis and does not support the JSPs' position that the Proposed Language should simply state that a clawback of previously made REC payments was not part of the current contractual arrangement. Staff Rep. at 9.

##### **3. IPA's Position**

It is unclear to the IPA whether the JSPs recommend that the discussion of clawbacks should be removed from the Proposed Language, or whether JSPs were simply making an argument in support of the IPA's discussion. Regardless, the IPA wishes to clarify that the purpose of Section 3.23.6 is to establish a record of the various approaches to contract prioritization considered by the IPA. In the IPA's view, this section weighs a number of statutory, pragmatic, and fairness considerations, including a

discussion as to whether a clawback approach was a viable option. The IPA provided a multitude of reasons in the Proposed Language as to why a clawing back of REC contract payments is inadvisable. The IPA also recognizes that no other party has expressly proposed a clawing back of REC contract payments to address the RPS budget shortfall (although it notes that clawbacks may be an unintended consequence of the Clean Grid payment reduction approach). Accordingly, while the IPA is open to revising this section's language, the IPA also sees value in preserving existing Proposed Language content expressly addressing why clawbacks are untenable.

#### **4. Commission Analysis and Conclusion**

The Commission agrees with the IPA and Staff that the discussion of clawbacks—if only to reject clawbacks—has value. However, the Commission also agrees with the Joint Solar Parties that to properly contextualize the discussion it would help to note that no party expressly raised or requested clawbacks. The IPA should include language to that effect in its compliance filing in response to this Order.

##### **D. Section 3.23.7**

##### **1. Deferral of Decision**

##### **a. ComEd's Position**

Because issues of contract payment prioritization and curtailment are of critical importance to the contractual counterparties and the overall health and viability of the State's renewables and clean energy markets and procurements, ComEd recommends that the Commission defer determination of these issues until the best information is available – namely, actual data gathered during the first half of the delivery year in which the RPS budget shortfall is expected to occur. In the same way that the IPA proposes to synchronize the “reduction in payment obligations to occur with the best possible information about those obligations” (Proposed Language at 97), the Commission should ensure that the determinations about contract payment prioritization and reduction are also made with the best possible information. At this time, however, ComEd notes that this information does not exist, and accordingly proposes that these determinations should be postponed to avoid sending erroneous market and pricing signals – based on incomplete or speculative data – that could have a chilling effect on Illinois renewable and clean energy markets. ComEd Obj. at 6.

Finally, ComEd observes that – in addition to affording additional time to gather the best information – deferring determinations related to contract payment prioritization and curtailment allows the legislative process to fully proceed. Moreover, this deferral can be accommodated under the current payment structures and timelines. Because full payment will continue to be made at least through 2021, this provides time for the Commission to revisit contract payment prioritization and curtailment issues in late 2021 when better and more mature data is available. That process can proceed on an expedited schedule similar to that proposed in the IPA's Petition and adopted by the Administrative Law Judge. ComEd Obj. at 6-7.

##### **b. JSPs' Position**

The Joint Solar Parties strongly oppose ComEd's proposal to defer a decision on changes to the REC contracts until after December 31, 2021. The JSPs aver that this

docket has two primary values: providing clarity for an orderly start to the new reconciliation period on June 1, 2021 and—equally if not more important—a structure for an orderly system of payment deferrals if/when expected revenues are exceeded by utility payment obligations. JSPs Resp. at 2-4. The Joint Solar Parties echo arguments by the IPA, Staff, and others that sufficient information is currently available to set a payment prioritization approach and that clarity for system owners is of paramount importance. The JSPs conclude that the effect of ComEd's proposal would be to remove most of the meaningful benefits of reopening to the solar industry. JSPs Rep. at 5-6.

**c. Clean Grid's Position**

Clean Grid firmly disagrees with ComEd's proposal, asserting that there is sufficient information at this time to determine a prioritization methodology. Clean Grid expresses concern that delay in the prioritization methodology would foster market uncertainty for those who have contracts. Moreover, the uncertainty it sows discourages future participation by developers of all sizes. Clean Grid explains that sellers want to minimize their financial risks; therefore, sellers want to know as soon as possible the methodology for reducing payments and the process the IPA will follow in managing the budget. Clean Grid Resp. at 4.

ComEd also argues that this effort is moot if the legislature passes a bill fixing the budget. Clean Grid responds by asserting that there is an immediate need for market certainty and the time it will take the IPA to put in place the system to manage a RPS shortfall necessitates the Commission issue an Order on the IPA's proposal in this docket without undue delay. Clean Grid Resp. at 4.

**d. Joint NGOs' Position**

The Joint NGOs agree with ComEd that perfect budgetary information is not yet available and that any chilling effect on the renewables market should be avoided or mitigated to the extent possible. Unfortunately, the harm to the market has already been created by the expectation of payment deferral. The IPA's December 28, 2020 public announcement of an expected mismatch between RPS budget collections and anticipated expenditures, as well as its March 3, 2021 Petition, has created that expectation. At this point, the Joint NGOs argue that the best route for mitigating that chilling effect and shoring up, to the extent possible, the viability of the State's renewable and clean energy markets and procurements is to provide certainty around the way payment deferral would proceed, as proposed by the IPA. JNGO Resp. at 2-3.

By making decisions around prioritization and payment deferral, the Joint NGOs explain that the IPA's Proposed Language provides certainty. Certainty enables contract holders to understand and plan for how their contracts could be impacted. It also enables ongoing and upcoming REC procurement – which continues to occur under the ILSFA program – to proceed without the chilling effect of uncertainty. Furthermore, none of the renewable market participants that have intervened as parties to this case are arguing for delaying a decision. The Joint NGOs urge the Commission not to delay a decision on contract prioritization and payment deferral. Further delay will only compound the harm to the market. JNGO Resp. at 3.

**e. Staff's Position**

Staff recommends that the Commission not defer the payment prioritization until the end of the calendar year. Staff Rep. at 13.

**f. IPA's Position**

The IPA understands ComEd's position, but firmly believes that parties should be on notice as soon as possible as to the potential consequences resultant from this budget situation. While ComEd argues that the overall health and viability of the State's renewables and clean energy markets and procurements is a reason to defer determination of these issues, the IPA sees the situation in reverse – the sooner that clarity around payment expectations can be provided to contractual counterparties, the more helpful that information will be and the negative impacts on the renewable energy industry will be lessened. IPA Resp. at 15.

Furthermore, the IPA believes that it knows enough presently to develop a prioritization of payments in the event that payment reductions become necessary. According to the IPA, the types of obligations which exist under the RPS and the statutory guidance of Section 1-75(c)(1)(F) of the IPA Act will remain unchanged, regardless of what is learned at the end of the year regarding actual expenditures and energizations. Thus, in the IPA's view, none of the information which is currently unknown will inform the IPA's opinion as to whether a specific expense type should be subject to a payment reduction. Because the IPA seeks Commission approval of a proposal addressing the types of obligations subject to a reduction, not the amount of obligations, there is no need to defer the determinations for payment prioritization until December. IPA Resp. at 16.

ComEd also argues that deferring determinations related to contract payment prioritization and curtailment allows the legislative process to fully proceed, but it is unclear to the IPA how the legislative process would proceed less fully by virtue of having more clarity as to how the payment reduction process would unfold if legislation is not enacted which resolves the RPS shortfall. Conversely, the IPA believes that adoption of its proposal to determine payment prioritization now, while continuing to make payments in full for the first six months of DY2021-2022, provides the opportunity for the legislative process to proceed without disruption to the parties involved and at the same time provides clarity as to the future of the RPS obligations if no legislation is enacted. IPA Resp. at 16.

**g. Commission Analysis and Conclusion**

The Commission notes the assertion by the Joint NGOs that the market has already been disrupted by the creation of an expectation of payment deferrals by both the IPA's December 28, 2020 public announcement and the IPA's Petition. While the Commission understands that perfect data is not yet available, it is important to provide all parties with structure going forward in the event that a legislative fix is not reached. Therefore, ComEd's proposal to defer a decision on this matter is not adopted.



## 2. Changing “Payment Reduction” to “Payment Deferral”

### a. JSPs’ Position

According to the Joint Solar Parties, the Proposed Language uses the term “payment reductions” when by context and mechanics the Proposed Language appears to have meant deferrals. The JSPs highlight their strong disagreement with curtailments (permanent reductions in payments), which some may believe is implied by the term “payment reductions.” JSPs Obj. at 7. The JSPs note that no party appears to have objected to their recommendation that the Proposed Language use the term “payment deferral” rather than “payment reduction.” JSP Rep. at 5.

### b. Staff’s Position

Staff agrees with the JSPs’ recommendation to replace the phrase “payment reduction” with the phrase “payment deferral” as it better described the IPA’s approach. Staff Resp. at 6. Staff continues to agree with the JSPs’ recommendation, especially in light of the fact that the IPA does not object to the proposal.

### c. Commission Analysis and Conclusion

The Commission notes that no party appears to have objected to the Joint Solar Parties’ recommendation that the LTRRPP use the term “payment deferral” rather than “payment reduction.” The Commission agrees that the IPA appears to intend to defer payments rather than reduce payments. Accordingly, the JSPs’ proposal is adopted.

## 3. Updates

### a. JSPs’ Position

The Joint Solar Parties largely agree with the IPA’s Proposed Language regarding the December 31, 2021 announcement, but propose to modify the concept of the IPA issuing an announcement to a more dynamic process where the IPA is constantly monitoring the situation and providing advance notice of at least three items:

1. the quarterly period for which the utility’s projected collections during the applicable reconciliation period will be exceeded by cumulative payment obligations taking into account the impact on payment obligations that certain contracts will not be subject to deferrals;
2. the *pro rata* amount (i.e. the percentage) of invoiced amounts that will be deferred to future invoices; and
3. the quarterly period—almost certainly the first quarterly period to be paid in the next reconciliation period—during which the utility will resume full payments.

JSPs Obj. at 8. The JSPs propose that the IPA would eventually issue a notice with this information. The Joint Solar Parties also propose that the information in the IPA’s notice would be referenced in the ABP REC contract amendment —particularly the quarterly period when payment deferrals start and the *pro rata* amount that will be deferred—to defer utility buyer payment obligations. JSP Rep. at 6-7, App. B.

In response to an observation from the IPA that not all REC contracts are paid on a quarterly basis, the JSPs clarify their proposal to recommend that for the utility-scale REC contracts the months comprising the corresponding quarterly period are lumped together and the seller is paid up to the same amount allowed for the quarter. The JSPs provided the following illustration: If the quarterly period of March-May 2022 is the quarterly period where payment obligations exceed the utility's resources and the deferral percentage is 40%, then buyer should pay a utility-scale seller 60% of the invoice value for the March 2022, April 2022, and May 2022 invoicing periods—the same as the 60% that will be paid on the normal schedule for the single invoice for the March-May quarterly period. JSPs Rep. at 7.

**b. Ameren's Position**

Ameren opines that the intent of the JSPs' recommendations in this section is not entirely clear. But it appears the JSPs are recommending the IPA implement three changes as future process improvements, with the utilities being responsible for providing the IPA with some of the data. Ameren believes these recommendations are outside of the scope of this proceeding, which is intended to be for the limited purpose of considering the budget shortfall for the DY2021-2022 and approving an approach for the contract reductions necessitated by that shortfall. See Administrative Law Judge Recommendation to Reopen 19-0995 at 2. Therefore, Ameren recommends the Commission reject the JSPs' proposed recommendations. Ameren Resp. at 7-8.

**c. ComEd's Position**

In response to the IPA's proposal to provide updated RPS funding data by December 31, 2021, ComEd notes that the JSPs proposed "a more dynamic process where the IPA is constantly monitoring the situation and providing advance notice of at least three items." JSP Obj. at 8; ComEd Resp. at 4.

ComEd reiterates that it is premature at this time – well before DY2021-2022 has commenced and legislative processes have concluded – to make determinations regarding contract payment deferrals and prioritization of payment, including contract amendments. Even so, and independent of a contract amendment, ComEd indicates that it generally supports proposals designed for the IPA to continuously monitor and provide timely and accurate updates to the RPS budget issues and thus has no objection to the first item proposed by the JSPs. Regarding the second item, however, ComEd indicates that it does not support determinations with respect to deferrals at this time. Better information regarding project energization dates and timelines will become available after DY2021-2022 commences, and ComEd accordingly believes the more prudent approach is to defer decisions on deferred payments to later in calendar year 2021 when more mature data is available. Finally, with respect to the JSPs' third item, ComEd similarly recommends that determinations regarding when the utilities will resume full payment be postponed until later in 2021 when the IPA, Commission, and stakeholders can evaluate – and make decision based on – actual experience during the first half of DY2021-2022. ComEd Resp. at 4-5.

**d. Clean Grid's Position**

Clean Grid supports the JSPs' proposal regarding updates. Clean Grid also proposes an additional item of which the IPA should provide advance notice: a forecast of how the Commission-approved prioritization methodology will impact the REC contracts. Clean Grid explains that sellers will want to know as early as possible the impact of the prioritization methodology on their project/contract. Clean Grid recommends this information be provided in the December 31, 2021 compliance filing and once in the fall. Clean Grid recommends the fall notice, at a minimum, include this fourth notice topic and be based on data through August 2021 (i.e., the first quarter of operation in the DY2021-2022). Clean Grid Resp. at 5.

**e. Staff's Position**

Staff did not take issue with the JSPs' Objection. Staff notes that all stakeholders would benefit from more frequent updates of this information. The REC revenues are important for the renewable generation producers. The Commission may want to be updated more frequently in the current situation, where many factors could be affecting all the stakeholders during this year. Staff Resp. at 6.

After consideration of the IPA's Response, Staff agrees with the IPA's modified proposal that the IPA should work with all interested stakeholders to develop mechanics to achieve more frequent notice of utility funding.

**f. IPA's Position**

The IPA notes that the JSPs propose that "at least" these three items would be included, but it is not clear what else is requested. Additionally, the IPA notes that not all contracts are invoiced quarterly; utility-scale project REC contracts are invoiced monthly. Ultimately, the IPA is willing to work with all interested stakeholders to develop the mechanics of this monitoring process, including the process by which the utilities provide to the IPA the required information on the appropriate schedules, during the REC contract amendment process. IPA Resp. at 10.

**g. Commission Analysis and Conclusion**

The Commission commends the IPA's willingness to work with all interested stakeholders to develop the mechanics of this monitoring process, including the process by which the utilities provide to the IPA the required information on the appropriate schedules, during the REC contract amendment process. The Commission agrees with Staff that both the Commission and interested stakeholders will benefit from more frequent notice regarding funding. The Commission approves the JSPs' proposal as modified by the IPA to work with parties to develop the mechanics.

**4. Payment Deferrals**

**a. JSPs' Position**

The JSPs note that Clean Grid and National Grid both made proposals that either on their face or in effect would shield the initial forward procurement and subsequent forward procurement for utility-scale wind and solar from payment deferral. The Joint Solar Parties oppose both recommendations. They highlight that Clean Grid's proposed preference based on REC contract dates is unworkable practically, and Clean Grid

provides no reason why utility-scale REC contracts should be protected over ABP REC contracts when both pre-date the IPA's December 28, 2020 guidance that first identified the likelihood of substantial payment deferrals. In response to National Grid, the JSPs additionally point out that Section 1-75(c)(1)(F) of the IPA Act places the ABP and the forward procurements on equal footing if there is a payment shortfall. JSP Resp. at 6-7.

**b. Ameren's Position**

Ameren notes that by December 31, 2021, the IPA proposes to provide a compliance filing in this docket updating the status of the RPS budget and outlining the RPS budget available at the conclusion of the calendar year for use in the remainder of DY2021-2022, as well as updated projected expenses for that upcoming period. Ameren Rev. Obj. at 3-4. Ameren does not object to such a compliance filing by the IPA but proposes that the remaining RPS budget as of December 31, 2021 should utilize Ameren's methodology associated with the maximum allowable expenses for DY2021-2022 so as to ensure uniformity throughout the process. Since Ameren will need to provide much of the actual data to the IPA for inclusion in the compliance filing, Ameren recommends an Order acknowledging Ameren's need to provide actual data to the IPA and that the IPA compliance filing will follow the methodology proposed when determining the maximum allowable expenses for DY2021-2022. As an alternative to the IPA proposal, Ameren could provide a compliance filing which incorporates actual data through May 31, 2021 and then illustrates the maximum allowable expenses for DY2021-2022. This would be followed by a separate compliance filing by the IPA which adds the data necessary to estimate the remaining RPS budget for the balance of DY2021-2022. Ameren Rev. Obj. at 4.

Ameren also notes that on page 97 of the Proposed Language, the IPA outlines the proposed payment reduction approach which would exempt expenses under the LTPPA contracts and utility DG REC procurement contracts, both of which pre-date FEJA. The proposal then recommends that existing ILSFA contracts and new ILSFA contracts stemming from budget allocations for the DY2021-2022 should receive prioritization. Ameren has no objection to either of these proposals.

However, it is unclear to Ameren what the IPA is proposing for the prioritization of all remaining REC contracts including utility-scale, brownfield and ABP. Ameren states that one possible interpretation is that all remaining contracts would receive a percentage reduction in payment once the maximum allowable expenses are reached for DY2021-2022. If that is the case, Ameren would propose that the percentage reduction be based on RECs under contract and not dollars under contract. Stated more clearly, those contracts with a higher percentage of RECs relative to total RECs for all contracts would receive a smaller reduction compared to those with a lower percentage for the same calculation. Ameren's rationale is that RECs should take priority in this calculation because they are the metric used to measure progress toward the targets under the RPS.

Another possible interpretation, Ameren asserts, is that the IPA is proposing that the prioritization be based on a "first invoiced, first paid" basis until such time as the maximum allowable expenses are reached for DY2021-2022. If that is the case, Ameren believes it would create some winners and losers since the ABP contracts contain front loaded contract provisions, whereas competitive procurements are paid upon REC

delivery over the 15-year term. Perhaps a more equitable approach would be to prioritize each invoice cycle based on energization date, with the projects that have the earliest energization dates having the highest priority and then moving chronologically through the older energization dates until the maximum allowable expenses for DY2021-2022 are reached. Ameren Rev. Obj. at 4-5.

Ameren notes that while it appears the IPA is proposing pro-rata reductions for all contracts, the methodology by which this would be accomplished is not clear. For example, whether the pro-rata reductions would be for all contracts or for only energized contracts. Whether the pro-rata reductions would be based on dollars in each contract divided by the total dollars of all contracts (e.g. if total dollars of all contracts was worth \$1,000,000 and one contract was worth \$100,000, would that one contract receive a 10% reduction). Or whether the reduction would be equally shared based on the total number of contracts (e.g., if 100 total contracts existed, would each contract get a 1% reduction). Ameren Rep. at 4.

Given the considerable difference of opinion and that this is the last opportunity for parties to provide comment, Ameren proposes that the payment reduction methodology is better addressed in a workshop process outside of this proceeding. Under this proposal, the Commission would order: a) the proposed budget methodology for the DY2021-2022; b) the prioritization of funds used for payment; and c) the DY2022-2023 budget will be determined in the next LTRRPP to be filed later this year. However, a decision regarding the payment reduction process would be deferred until such time as the IPA can hold one or more workshops to present its proposal in more detail and allow parties to provide feedback in an attempt to find common ground. The results of the workshop process and the IPA's recommendation would then be included in the next revised LTRRPP, with the IPA seeking one round of comments from parties and an expedited Order from the Commission on this issue. The remainder of the issues addressed in the next revised LTRRPP would follow the typical process and timeline. Ameren Rep. at 5.

Ameren makes a further recommendation regarding ACP payments. It states that for each invoice cycle during the delivery year, Ameren would first use customer receipts associated with the DY2021-2022 Rider REA collections until these are exhausted and then use legacy ACP dollars for the remaining REC payments. IPA Resp. at 16-17. The IPA asserts that this approach is inconsistent with the Commission-approved prioritization of alternative compliance payment found in the LTRRPP and otherwise inconsistent with Illinois law. IPA Resp. at 17. Moreover, the IPA asserts that customer receipts should not be used and instead use the renewable resources budget which is established in advance of the delivery year. IPA Resp. at 17. Upon further reflection, Ameren agrees this option is not favorable and should be removed from consideration.

### **c. ComEd's Position**

ComEd explains that it agrees with the IPA's view that sufficient RPS funding is available to pay in full all REC delivery contracts for at least the first six months of the upcoming delivery year commencing June 1, 2021 and concurs that this approach should be adopted. As the IPA notes, "[t]his approach will hopefully create as little disruption as possible to all parties." Proposed Language at 97. This "status quo" proposal also

acknowledges that “actual 2021-22 delivery year expenses will not be clear until observing energization patterns within that delivery year” and recognizes the value of waiting to impose a reduction in payment obligations until “the best possible information about those obligations” is available. Proposed Language at 97; ComEd Obj. at 4.

During this period, moreover, ComEd observes that the IPA also proposes to collect and analyze data regarding contract payments and energization dates, and to submit a compliance filing in this docket by December 31, 2021, that addresses the available RPS budget for use during the remainder of the delivery year and provides an update regarding projected expenses. ComEd states that it similarly supports this effort as critical to informing the IPA and Commission determinations regarding contract payment prioritization and reductions. ComEd Obj. at 4.

ComEd observes that Clean Grid includes a prioritization proposal for those contracts that are subject to payment reductions during the latter part of DY2021-2022. Specifically, Clean Grid proposes that these contracts should be prioritized by date – a first-in first-paid prioritization. The prioritization would use the contract execution date of the initial forward and other forward contracts and the date the ABP applicant was awarded its contract. Clean Grid Obj. at 2; ComEd Resp. at 3.

As an initial matter, ComEd continues to recommend that determinations regarding contract payment reductions, deferrals, and prioritization be postponed to later in the 2021 calendar year when better information will be available regarding project energization dates and legislative contingencies. As a practical implementation matter, moreover, ComEd explains that it is concerned that Clean Grid’s proposal could impose significant administrative burdens on the IPA and electric utilities given the multistep processes that are involved with ABP contract execution and the overlay of Commission approval. For these reasons and those set forth in ComEd’s Objections, ComEd recommends that this prioritization proposal not be adopted. ComEd Resp. at 3.

While ComEd recommends that contract payment deferral and prioritization issues be taken up later in the year once updated RPS budget information and project energization timelines are available, ComEd notes that it generally concurs with the proposal outlined by National Grid regarding the prioritization of utility-scale renewable projects in the event that payment deferrals become necessary. For the reasons set forth in National Grid’s Objections and those provided by ComEd below, ComEd states the proposal is reasonable and well-founded should prioritization be required. ComEd Resp. at 5.

As an initial matter, ComEd observes that the IPA acknowledges that the RPS provisions of the IPA Act set forth an order of prioritizing payment of RPS expenses should the expenses for a given delivery year exceed the funding available under the statutory rate cap. 20 ILCS 3855/1- 75(c)(1)(F); Proposed Language at 95. Citing to the statute’s top prioritization of “(i) renewable energy credits under existing contractual obligations,” the IPA recommends that payment reductions should exempt payments due under both the 2010 LTPPA and 2016-2017 utility DG procurements, which were executed prior to FEJA June 1, 2017 effective date. Proposed Language at 98. In addition to the pre-FEJA timing of these contracts, the IPA observes that exempting these obligations affords administrative ease because “the contract form and structure of these

agreement was developed in an entirely different timeframe and under different applicable law than with the development of REC delivery contracts.” Proposed Language at 98; ComEd Resp. at 5-6.

According to ComEd, if it is later determined that contract payment deferrals are necessary, it follows that the exemption afforded to pre-FEJA contracts should be extended to the other utility-scale contractual obligations funded through the RPS – namely, the utility-scale wind and solar contracts previously procured by the IPA on behalf of electric utilities pursuant to Section 1-75(c)(1)(G) of the IPA Act . ComEd argues that this is because the FEJA utility-scale contracts are more akin to the pre-FEJA contracts than to the ABP contracts. First, ComEd explains, as required by Section 1-75(c)(1)(G), the majority of the FEJA utility-scale contracts were executed prior to, and independent of, the ABP and Commission approval of the first LTRRPP. Second, the FEJA utility-scale contracts bear a payment structure that is more similar to the Pre-FEJA contracts than the ABP payment structure. Unlike the ABP, which requires payment of a substantial portion of the total contract price upfront upon energization, the FEJA utility-scale contracts provide for payments spread out over their 15-year terms subject to monthly invoices for RECs actually delivered. Proposed Language at 92; ComEd Resp. at 6.

#### **d. National Grid’s Position**

National Grid states that it supports the IPA’s proposal to make full payments on all REC contracts for the first six months of the 2021-2022 delivery year. National Grid explains that the IPA’s proposed approach will not only provide a continued funding stream for at least the immediate future, but also provide additional time for the consideration and enactment of funding rollover legislation. National Grid Obj. at 4.

National Grid states that it appreciates both the proactive efforts by the Commission and the IPA to directly address the issues associated with the upcoming potential funding shortage in the absence of remedial legislation, and the engagement of stakeholders in advocating for a practical and effective solution to this situation. Although National Grid understands that the IPA’s funding proposal seeks to balance a variety of practical, legal, and policy considerations, it appears to National Grid that the proposal may fail to adequately support utility-scale solar projects, which embody several unique characteristics that are critical to substantial movement toward fulfilling the Illinois RPS requirements in the most economically and administratively efficient manner. National Grid Resp. at 2.

National Grid explains that FEJA and the economics of renewable energy projects suggest a reasoned basis for prioritizing utility-scale projects. Specifically, when the Illinois General Assembly passed FEJA, it directed the IPA to solicit REC contracts for the annual delivery of one million RECs from new utility-scale solar projects. That legislative mandate took the form of the IPA’s initial forward procurement, and the IPA was required to conduct the procurement event no later than one year from FEJA’s effective date, irrespective of whether the IPA’s LTRRPP was finalized. Because utility-scale projects were legislatively prioritized in this manner, National Grid notes that they are currently scheduled to energize this year. National Grid Obj. at 4-5.

National Grid further explains that the General Assembly’s decision to use FEJA to prioritize the development of utility-scale solar projects was a reasoned and practical

approach, given the State's RPS requirements. Utility-scale solar provides the most "bang for the buck" in advancing Illinois' RPS compliance efforts. National Grid Obj. at 5.

National Grid also explains that utility-scale projects comprise a limited portion of the already-limited budget at issue in this proceeding, as they have: (1) lower REC costs than ABP projects; and (2) RECs that are paid for as they are generated, rather than being paid up front. This is illustrated by the IPA's own budget estimates for DY2021-2022 -- namely, the \$28 million estimate for the forward procurements (i.e., utility-scale projects) compared to the \$293 million estimate for the ABP (i.e., non-utility-scale projects). Further, National Grid explains that it is currently not clear how many ABP projects will actually be energized during the year of the projected funding shortfall, especially with nearly every community solar project requesting an extension under the program. As such, there may be savings in the program by not having to pay all or a portion of the RECs upfront to projects that do not energize during the 2021-2022 delivery year. Specifically, in the case of small DG projects under the ABP, that is a 100% upfront REC payment, and for large distributed generation and community solar projects under the ABP, that is a 20% upfront REC payment. National Grid Rep. at 4-5.

#### **e. Clean Grid's Position**

Clean Grid initially proposed that the initial forward, other forward, and ABP contracts be prioritized based on 'first-in first-paid' using the contract execution date of the initial forward and other forward contracts and the date the ABP applicant was awarded its contract. Clean Grid Obj. at 2-3. Clean Grid notes that the IPA, the JSPs, and ComEd all raise a similar concern regarding the application of Clean Grid's 'first-in first-paid' prioritization proposal for ranking ABP projects, stating it would cause a significant if not unworkable burden to the IPA and buyer utilities. In response to these comments, Clean Grid modified its prioritization methodology so the 'first-in first-paid' proposal applies only to contracts other than ABP contracts. ABP contracts would be evaluated under the methodology proposed by the IPA. Clean Grid Rev. Rep. at 9-10.

In response to the IPA's position that Clean Grid's approach does not comport with the IPA's interpretation of the statute, Clean Grid argues that Section 1-75(c)(1)(F) of the IPA Act clearly states a priority among the sub-sections, but it is silent as to whether the IPA or Commission can prioritize the numerous contract categories within a subsection or if contract categories within a subsection of 1-75(c)(1)(F) are to be treated equally. Therefore, Clean Grid argues, it is left to the IPA's and Commission's discretion whether to prioritize the contracts within the subsection or treat them as the IPA has proposed. Clean Grid Rev. Rep. at 6.

Clean Grid argues that its proposed methodology is consistent with the intent of the statute for multiple reasons. First, the General Assembly prioritized the initial forward wind, solar and brownfield procurements (see 20 ILCS 3855/1-75(G)) and those procurements were the first subsection (ii) contracts conducted. Clean Grid Rev. Rep. at 8. Second, while the RPS statute has targets for both competitively procured RECs and ABP RECs, the competitively-procured RECs better fulfill the RPS statute's goal related to low cost compliance and it sends a positive long term signal to the energy providers the state will rely upon to reach the State's clean energy goals. Prioritizing the competitively bid contracts over ABP contracts gives effect to the General Assembly's



goal of procuring lowest total cost resources over time. 20 ILCS 3855/1-5(1), 1-5(5), 1-5(A), 1-5(F), 1-20(a)(1), 1-56(i)(3) and (1-75(b)). Third, sellers in the initial forward and other forward contracts are taking on a greater financial risk per project than ABP projects, and that merits consideration in the long-term view of Illinois' energy market. Fourth, the 'first-in first-paid' priority sends a positive signal to lenders. Clean Grid states that stable market conditions manifest benefits in lower financing costs and consequently a lower cost of energy for Illinois ratepayers. Clean Grid argues this is beneficial for Illinois in the long-term, especially because Illinois will need significantly more large-scale wind and solar capacity than it currently has to reach the 25% RPS target (20 ILCS 3855/1-75(c)(1)(B)) and a 100% clean and renewable Illinois economy goal. Clean Grid Rev. Rep. at 9.

In response to Ameren's critique that Clean Grid's prioritization approach does not consider whether the project is energized or not. Clean Grid clarifies that the intent of its proposal is that only sellers that are energized (i.e., be placed in-service and generating electricity) and delivering RECs to the buyer utilities during DY2021-2022 can make a claim for a REC payment. Clean Grid Rev. Rep. at 10.

Clean Grid states that the IPA and utilities should be aware of the initial delivery date of each initial forward and other forward contract seller. If they are not aware of that date, Clean Grid recommends the IPA develop a process for large-scale sellers that are just starting their delivery of RECs in DY2021-2022 to notify the IPA of their date of first delivery. Clean Grid Rev. Rep. at 10.

With respect to Ameren's proposed alternatives, Clean Grid notes that the first alternative – to prioritize payments based on contract size - indirectly results in the biggest bang for your buck, and that is an important policy consideration in prioritizing the payment of limited REC funds. Typically, Clean Grid explains, the larger scale projects have the lowest REC price so you get the most RECs per dollar spent. To maximize the value of its REC expenditure, larger projects with lower cost RECs should be given REC payment priority over projects with more costly RECs. Clean Grid Resp. at 2.

Clean Grid opposes Ameren's second alternative because it rewards entities that are quick to submit an invoice. This would appear to reward smaller sellers, sellers that have less data to collate into an invoice, or a seller that has an automated system for its billing. In addition, this alternative would appear to put utility-scale projects at the back of the line simply because they have to collect data from a large number of turbines or solar panels and then create separate invoices for each utility. Finally, Clean Grid notes that while this alternative may be the easiest method for the utility to manage, because the utility would pay based on the date the invoice is received, it fails to account for value -- getting the most RECs for the dollar spent. Clean Grid opposes Ameren's third alternative because it is agnostic to value (e.g., bang for the buck) and a project's financial risk. Clean Grid Resp. at 2-3.

#### **f. Joint NGOs' Position**

The Joint NGOs acknowledge that developing an approach to deferring REC contract payment is difficult. Section 1-75(c) of the IPA Act does provide some high-level guidelines that the IPA correctly cites as potentially prioritizing expenses for contracts that predate FEJA and the ILSFA program. However, beyond this high-level prioritization,

there is no further guidance in the statute to direct the IPA on navigating the anticipated mismatch between budgets and costs. Thus, further decisions around prioritization are left to the IPA. There will likely always be room to quibble with the details of how a deferral approach is applied in a particular situation. However, the Joint NGOs state that the Commission's standard in this proceeding is to determine whether the IPA's Plan, and in this case the Proposed Language, "reasonably and prudently accomplish the requirements of [the Act]," not to decide whether the Plan is perfect or whether it follows the preferred approach of any other party. 220 ILCS 5/16-111.5(b)(5)(ii)(D); JNGO Resp. at 3-4.

The Joint NGOs do not believe that the parties objecting to the IPA's proposal have identified any legal deficiency in the Proposed Language. The IPA's approach is reasonable and prudent, and the objecting parties have not proposed alternatives that are objectively more reasonable than the IPA's approach. The Joint NGOs note that National Grid argues that the statute provides a "legislative mandate" to preference payment to utility-scale renewable contracts over other contracts by requiring some initial forward procurements of utility-scale renewables to occur earlier in time than other REC procurements. However, this argument falls apart upon a close read of the law. Section 1-75(c)(1)(F) of the IPA Act does in fact explicitly shows preference for payment of some contracts and expenses over others. And RECs from utility-scale renewables are explicitly referenced in this preferencing. Utility-scale renewable RECs are among the RECs listed in item (ii) as are the other contracts National Grid argues should be prioritized behind utility-scale renewables. If the General Assembly had intended to prioritize payments for utility-scale RECs over payments to the other RECs necessary to comply with the new wind and new photovoltaic requirements described in statute, it would have said as much in Section 1-75(c)(1)(F). The existence of direction elsewhere in the statute to hold some utility scale renewable procurements earlier in time than procurements for other new renewables cannot, in the Joint NGOs' opinion, be fairly construed as a legislative mandate to preference payments to utility-scale renewable RECs. JNGO Resp. at 4-5.

In this case, the IPA—not any other party—is tasked with developing an approach to deferring contract payment. The approach to contract deferral laid out in the IPA's Proposed Language is reasonable and prudent, and no party has made a compelling argument to preference certain contracts over others. The Joint NGOs assert that the Commission should approve the IPA's Proposed Language without adopting Ameren's, Clean Grid's, or National Grid's preferencing proposals. JNGO Resp. at 5.

#### **g. Staff's Position**

In response to Ameren's proposal to prioritize RECs over dollars, Staff recommends that the Commission reject this amendment. The IPA highlights the difficult procedural questions raised by Ameren's proposed allocations. In addition, Staff notes, by prioritizing RECs over dollars, the change would de facto reduce the share of funds going to smaller projects. This seems contrary to the spirit of FEJA, which initiated several programs besides utility scale renewable generation. This is consistent with the IPA's approach to include all programs in the payment deferrals after setting aside legacy programs and ILSFA. Staff Rep. at 15.

Staff also opposes National Grid’s proposal. Staff notes that while it agrees that utility-scale projects result in lower prices for RECs when compared to other programs pursuant to the RPS, it is important to note that the RPS law has other goals besides “bang for the buck.” The statute also established the ILSFA program to provide access to renewable resources to low-income customers. Likewise, the Community Solar program is a method to give Illinoisans the ability to purchase Illinois solar energy without having to install solar panels at their premises. In sum, the law does not allow abandoning the other goals of the renewable generation requirements by allocating all funds to the utility scale program. Staff Resp. at 12. Staff opposes categorically prioritizing utility scale projects over other projects.

As to the Clean Grid proposal to prioritize reductions based on contract date, Staff opposes Clean Grid’s proposal. Staff Rep. at 19.

#### **h. IPA’s Position**

In its Proposed Language, the IPA proposes an approach to payments impacted by the RPS budget shortfall consistent with the following guidelines. First, the IPA proposes that REC delivery contracts should continue to be paid in full for at least the first six months of DY2021-2022. Second, the IPA proposes to provide a compliance filing in this proceeding by December 31, 2021, updating the status of the RPS budget, outlining the RPS budget available at the conclusion of the calendar year for use during the remainder of the delivery year, and updating projected expenses for the remainder of the delivery year. Third, the IPA proposes that payment reductions should exempt both the LTPPAs and the utility DG procurement expenses. Fourth, the IPA proposes to prioritize ILSFA contract expenses, and payouts under those delivery contracts should not be reduced. Fifth, the IPA proposes to maintain the 2021-2022 delivery allocations for ILSFA – including the \$10 million job training program allocation. Sixth, the IPA proposes that at the start of DY2022-2023, any payment reductions implemented in DY2021-2022 should immediately be prioritized as payments due to those sellers in the first invoicing cycle of DY2022-2023. IPA Resp. at 8-9.

Based on the record, the IPA understands its proposal to be uncontested by the JSPs, the Joint NGOs, and Staff. While other parties provide alternative proposals, the IPA believes its proposal is prudent, reasonable, best supported by both the record and other parties’ positions. Also, it offers both certainty and fairness to affected market participants that other proposals lack. Specifically, the IPA notes that holders of REC delivery contracts reliant on those expected revenues have a right to know their potential exposure to revenue losses, and buyers benefit from legal certainty around the established prudence of making, for instance, full payments for the first half of the upcoming delivery year. The IPA underscores that its payment approach will provide much-needed clarity as to what type of impact the expected RPS budget shortfall will have on payments by contract type in the upcoming delivery year. Additionally, the IPA argues that fairness dictates that exempting or favoring certain project types should be rooted in statute, where all parties were placed on notice of prioritization - as the IPA’s proposals do through reference to the rank-order prioritization found in Section 1-75(c)(1)(F) of the IPA Act and carveout apportionment found in Section 1-75(c)(1)(O) - and not through reference to non-statutory considerations such as REC price or similarity in contract form. IPA Rep. at 2-3.

The IPA notes that Clean Grid proposes an alternative methodology where contracts are prioritized by date in a “first-in first-paid” scenario. The IPA sees numerous problems with this approach, believes it to be unsupported by statute, and views this approach as inconsistent with how ABP obligations are executed. First, according to the IPA, Section 1-75(c)(1)(F) of the IPA Act outlines the approach to be taken in the case of a budget shortfall, and Clean Grid’s proposal does not comport with the IPA’s interpretation of the Act. Second, the IPA believes this proposal to be unfair as no party was on notice that earlier-executed contracts might be given a priority in case of a budget shortfall, whereas 1-75(c)(1)(F) may have provided notice to other prioritization mechanisms. Third, the IPA explains that the effect of this proposal is for shortfalls to fall disproportionately upon small DG projects in the ABP. That category featured the latest program activity, by date and primarily serves residential customers (who may themselves bear the burden of payment reduction), which is likewise unfair. IPA Resp. at 12-13.

Moreover, with respect to ABP contracts, the IPA explains that individual projects are not awarded a contract under the ABP. Instead, explains the IPA, Approved Vendors are awarded a contract when they have compiled a batch of projects which meets certain threshold requirements for Commission approval. Thus, the utilization of a REC contract award date for prioritization is problematic, as it may inappropriately prioritize a system where the Approved Vendor received a contract long before the system was applied to the program. The IPA believes Clean Grid’s approach will thus disproportionately affect smaller vendors who may have had to wait longer to accumulate 100 kW of projects for submission of the first batch. To the extent that Clean Grid would seek use of the batch approval date (or batch execution date), the IPA believes this approach is likewise problematic, as it may inappropriately penalize a system which was applied early into the program but, as a result of being one of the first in a batch of primarily small systems, was Commission-approved after many other systems which were applied into the program at a later date. IPA Resp. at 13.

The IPA notes that National Grid proposes to prioritize utility-scale projects, exempting all utility-scale contracts—including those executed after the effective date of the FEJA—from payment reduction or deferral. While the IPA fully appreciates National Grid’s arguments related to the lost opportunities and higher costs for project owners in Illinois due to the threat of reduced REC payments and understands the potential chilling effect of the funding instability on utility-scale renewables development, it believes there is no statutory preference for utility-scale procurements. Specifically, the IPA explains, Section 1-75(c)(1)(F) of the IPA Act directs the IPA to prioritize certain RPS expenses over others in situations of payment reductions in the following order: (i) RECs under existing contractual obligations; (i-5) funding for the ILSFA Program, as described further in 1-75(c)(1)(O); (ii) RECs necessary to comply with the new wind and solar procurement requirements described in 1-75(c)(1)(C)(i)-(iii) (i.e., new photovoltaics under the ABP, new utility-scale wind, and new utility-scale solar); and (iii) RECs necessary to meet the remaining requirements of 1-75(c). Thus, according to the IPA, there is no statutory prioritization for post-FEJA utility-scale project REC delivery contracts. Those contracts, explains the IPA, are used to meet Section 1-75(c)(1)(F)(ii), which places those expenses on par with ABP obligations. IPA Resp. at 11.

Further, the IPA explains, under its proposal, utility-scale contracts do receive proportionately more favorable treatment than ABP contracts as a consequence of payment structure. The IPA outlines that this is because utility-scale contracts are paid over a full 15 year term, and thus one delivery year's worth of REC payments (say, DY2021-2022) for a utility-scale project constitutes only 6.67% (1/15th) of that full REC delivery contract value. By contrast, the IPA explains, for an ABP contract, those contracts' prepayment requirements result in one delivery year's worth of quarterly payments constituting 20% of the full REC delivery contract value of that project. Therefore, under the IPA's proposal, a utility-scale project featuring a \$10 million REC delivery contract value would be faced with a smaller payment deferral amount than a community solar project featuring a \$4 million REC delivery contract. The IPA thus disagrees with National Grid's assertion that utility-scale projects are not adequately supported under the IPA's proposed methodology. IPA Rep. at 13-14.

ComEd offers two arguments in support of National Grid's proposal, and the IPA disagrees with both. First, ComEd posits that utility-scale wind and solar contracts executed after the effective date of FEJA, *i.e.*, after June 1, 2017, should be given priority because of similarity in payment structure and other critical similarities to the 2010 LTPPAs executed many years before FEJA. The IPA responds that contract similarity is not a statutorily sound basis for extending contract type prioritization—and even if it somehow were, the IPA opines that ABP contracts are far more similar to prioritized ILSFA contracts. IPA Rep. at 14-15.

Second, ComEd argues that prioritization must be extended to post-FEJA utility-scale contracts because the majority of the FEJA utility-scale contracts were executed prior to, and independent of, the ABP and Commission approval of the first long-term renewable resources procurement plan. The IPA points out that this is factually incorrect, as more than twice as many contracts and projects (and RECs) are being supported through procurements conducted after Commission approval of the first long-term renewable resources procurement plan. Nevertheless, the IPA argues, this timing point is irrelevant; because neither set of contracts were “existing contractual obligations” at the time Section 1-75(c)(1)(F) became governing law, the IPA believes that all new utility-scale projects supported through FEJA are given equivalent statutory prioritization to ABP projects (both are used to meet Section 1-75(c)(1)(F)(ii)'s new project requirements), and thus both contract types should share equally in any payment deferrals. The IPA thus opposes the payment reduction proposal of National Grid. IPA Rep. at 15-16.

The IPA understands Ameren to be offering perhaps two different proposals. First, Ameren proposes that the percentage reduction in contracts be based upon RECs under contract rather than dollars under contract. However, as the IPA explains, delivery of RECs does not trigger payment under the ABP; rather, pursuant to statute, payment is triggered by energization, and many of the dollars under contract (or all, in the case of DG projects under 10 kilowatts in size) are paid upon energization. Thus, explains the IPA, there is not a direct correlation between REC delivery timing and payment timing for ABP projects as there is for utility-scale projects. As a result, the IPA believes these contracts cannot be reduced (or deferred) on the basis of REC deliveries made under the contract, and thus Ameren's proposal is unworkable and opposed by the IPA. IPA Resp. at 18.

Ameren next seeks instead to rank the facilities already energized in chronological order of energization, with the priority to continue payment based on first energization to last energization. However, explains the IPA, a rank-order approach would result in those falling near the end in the rank order bearing the full brunt of expense reductions while others toward the front remain unscathed—and yet those affected parties still will have abided by all legal and program-related requirements, and none would have executed their REC delivery contracts or batches on notice of a more acute payment risk. Thus, the IPA believes that relative to the IPA’s pro-rata reduction by contract type, where many parties share in minimized pain, Ameren’s approach of pushing the full payment burden onto later-energized projects is unfair and inequitable. Further, the IPA notes that Ameren has cited no statutory basis for why those who are first to energize should receive priority, especially given that energization timing may have limited correlation with contract execution timing (and thus even a strained reading of Section 1-75(c)(1)(F)(i)’s “existing contractual obligations” language is unavailable to Ameren as a legal basis for support). The IPA also believes that Ameren’s approach would be unfair because no party was ever made aware that its payment risks would be more acute if a system energized later (and thus places a disproportionate burden on parties who met all known program requirements), and would fail to provide clarity because developers of projects not yet energized cannot determine what payment deferral risk, if any, their projects under development would now face. The IPA thus also opposes this proposal by Ameren. IPA Rep. at 17-18.

In response to Ameren’s proposal regarding ACP funds, the IPA states that its proposal in the Proposed Language was to utilize ACPs as a “reserve balance of funds through which it can cover expenditures in excess of Section 16-108(k) collections.” Proposed Language at 77. The IPA states that its intent was to ensure that ACPs were spent only once the planned renewable resources budget, established by applying Section 1-75(c)(1)(E)’s requirements to the prior year’s retail sales, was exhausted, and not that the counterparty utility should begin spending ACPs if that year’s collections under Section 16-108(k) had not yet been made or recognized. The IPA notes that every RPS budget table produced by the IPA has reflected this prioritization; the upcoming year’s full budget established under Section 1-75(c)(1)(E) is first exhausted, and only then are ACPs drawn down to meet REC contract obligations.

#### **i. Commission Analysis and Conclusion**

The Commission notes that no party objected to the IPA’s proposal to exempt both the 2010 LTPPAs and 2015-2017 utility DG procurement expenses from contract payment deferrals. Similarly, several parties support, and no party directly objects to, the prioritization of ILSFA contract expenses, including maintenance of the 2021-2022 delivery allocations for the ILSFA program. Most notably, all parties appear to support the full payment of all obligations under the RPS during the first six months of DY2021-2022. Therefore, the Commission will adopt these parts of the IPA’s proposal as they reasonably and prudently accomplish the requirements of Section 1-56 and subsection (c) of Section 1-75 of the IPA Act in light of the budgetary constraints caused by the COVID-19 pandemic.

The next step in the IPA’s proposal is the most contested. The IPA proposes that the December 30th compliance filing’s updated estimates of projected expenses and

available budget would then be utilized for implementing REC delivery contract payment reductions or deferrals. The Commission finds that this approach will help ensure that any reduction in payouts serves only as a time-limited deferral of expenses, and as limited a deferral as possible. The Commission finds the IPA's proposal to be prudent, reasonable, and best supported by the record. Importantly, its proposal offers both certainty and fairness to affected market participants.

Finally, the IPA proposes that at the start of DY2022-2023, any payment reductions implemented during DY2021-2022 would immediately be prioritized as payments due to those sellers in the first applicable invoicing cycle of DY2022-2023. In other words, those expenses would thus be added to DY2022-2023 expenses as the highest priority payments, and DY2022-2023 budget projections as updated on May 31, 2022 will be adjusted accordingly in line with these new costs, and the payments will be made against the DY2022-2023 budget rather than cash receipts by the utility to date. It does not appear that any party objects to giving deferred payments the highest priority in DY2022-2023, and the Commission agrees with this approach.

Turning to the various approaches suggested for prioritizing payment deferrals, the Commission notes that National Grid and ComEd both support exempting utility-scale projects from payment deferrals. While the Commission recognizes that these projects provide for more economic RECs, the Commission cannot say that the IPA's treatment of utility-scale projects is unfair. In particular, the Commission relies on the IPA's explanation that due to the structure of utility-scale contracts, these projects are proportionally less impacted under the IPA's proposal than ABP programs. Also, the Commission finds that both the ABP program and utility-scale projects are used to meet Section 1-75(c)(1)(F)(ii)'s new project requirement, and thus there is no statutory basis for adopting National Grid's proposal. 20 ILCS 3855/1-75(c)(1)(F)(ii).

Clean Grid's proposal is also denied. The Commission notes ComEd's point that, as a practical implementation matter, Clean Grid's proposal could impose significant administrative burdens on the IPA and electric utilities given the multistep processes that are involved with ABP contract execution and the required Commission approval. Although Clean Grid then proposes that ABP contracts be excluded from its proposal, this simply serves to underscore that its proposal is a work in progress and therefore lacking in evidentiary support.

For Ameren's proposal that deferral of payments be based upon RECs under contract rather than dollars under contract, the Commission concludes that this proposal would increase the administrative burden on the IPA. The Commission finds this proposal to be unworkable because ABP contracts are payable upon energization, not when RECs are delivered. Ameren also seems to propose that prioritization should be based on the date of energization. The Commission finds this unfair, especially given that so many of the delays that led to this budget crisis are due to the COVID-19 pandemic. Also, like Clean Grid's proposal, Ameren's proposal does not appear complete and the Commission notes that, in fact, Ameren proposes that the IPA hold workshops to gather more feedback on an implementation plan. The Commission rejects this proposal, because the parties to these contracts need certainty going forward and unlike Ameren's proposal, the IPA's proposal is workable and well thought out.

The Commission further finds that the IPA's proposal adopted herein is not a solution to the current RPS budget situation. An actual solution can only be provided through legislation, and the Commission joins the IPA in hoping that the process of working through these complexities heightens all parties' urgency in achieving a legislative solution.

**E. Section 3.23.8**

**1. JSPs' Position**

The Joint Solar Parties recommend that the Commission approve the ABP REC contract amendment in Attachment B to their Objections, requiring the utility buyer to counter-execute within five business days of being presented a partially executed amendment by seller by sending it to the legal notice contact for buyer in the REC contract. First, the Joint Solar Parties note, the more time that passes before final amendment language is approved, the more time necessary parties (such as financing parties) will be in limbo and may withhold funds or approvals. JSPs Obj. at 9-11. The Joint Solar Parties aver that for many systems that have already been built or for which a construction loan has already been obtained, withholding funds or approvals by necessary parties will at minimum lead to a loss and potentially jeopardizes entire portfolios and business relationships between parties. JSP Rep. at 9.

Second, the Joint Solar Parties continue, the contract development process in Section 16-111.5(e)(2) of the Act that was used for the original REC contract was put in place for competitive procurements to keep potential and actual bidders out of the design of the standard product contract. The Joint Solar Parties note that the ABP (for which the Joint Solar Parties drafted an amendment) was not a competitive procurement and the posture here is amendment rather than initial contract development. JSP Rep. at 10.

Third, according to the Joint Solar Parties, in order to have value to the solar industry, the amendment to the ABP REC contract not only must be finalized as soon as possible but also with language that addresses the concerns of necessary parties. While the JSPs note their respect for the experience the IPA's Program Administrator, the three utilities, Staff, and the IPA bring to contract development, the Joint Solar Parties highlight that none have the requisite experience with necessary parties (especially related to financiers of ABP projects) to guarantee development of appropriate amendment language. Without the direct input of the solar industry, the Joint Solar Parties fear that the eventual amendment will be insufficient to motivate necessary parties to release funds, issue approvals, or take other required actions. The JSPs note that the IPA has historically allowed interested parties (including the solar industry) to provide feedback but the compressed timeline for final amendment language conflicts with the amount of time required to seek feedback on a draft version negotiated between the IPA, the procurement administrator, Staff, and the utilities. JSPs Rep. at 10-11.

In response to Ameren's concerns that the Commission does not have the authority to bind sellers under REC contracts to execute an amendment, the Joint Solar Parties agree with Staff's argument that, of course, the Commission has authority to approve a REC Contract amendment. The Joint Solar Parties posit in response to Clean Grid's argument that sellers will be motivated to sign because the utility is arguably entitled to broad discretion to suspend the REC contract if the REC budget is insufficient.



The Joint Solar Parties argue that the uncertainty surrounding the execution of the existing suspension provision will be sufficient motivation for sellers to execute the amendment. JSP Reply at 8.

While the Joint Solar Parties state a strong preference for approving an amendment in the present docket, the Joint Solar Parties present an alternative proposal modeled on the IPA's Response that finds a middle ground between the historic process and the constraints identified by the JSPs. Specifically, the Joint Solar Parties in the alternative recommend that the Commission set a deadline for the process and order that only conforming changes to the Commission's Order are made to the draft REC Contract Amendment included as Attachment B to JSPs' Reply. While the Joint Solar Parties argue that a deadline of July 1, 2021 will cause greater financial strain on the solar industry than approving an amendment with the Final Order, the Joint Solar Parties further argue that July 1, 2021 is far superior to an indefinite process. The Joint Solar Parties note that while they believe their language provides a clear signal to necessary parties and practical mechanics for the IPA and all parties to the ABP REC contracts as written, allowing for deviations consistent with the Commission's Order allows for flexibility in case the Joint Solar Parties' proposal is not adopted in whole. JSP Reply at 11.

The Joint Solar Parties recommend that the Commission make clear that the utilities may not suspend under Section 2.2 of the ABP REC contract (as modified by Section 13(c) of the Cover Sheet) until a reasonable amount of time after an amendment is approved, such as 30 business days. According to the JSPs, this timeline would be equally applicable if the Commission approves an amendment on May 27 along with its Final Order or if an amendment is finalized on or before July 1 under the Joint Solar Parties' alternative proposal. JSP Reply at 8-9.

## **2. Ameren's Position**

Ameren notes that the IPA indicates that the contract forms will likely need to be amended to address the issues surrounding payment reduction and deferral. Ameren makes note of the numerous versions of REC contracts currently executed and their considerable complexity. The contract amendment process described by the IPA, while potentially necessary, would add considerable administrative effort and expense to an already complicated process. To the extent the parties to these contracts could mitigate the administrative effort and expense through a standardized addendum, it would prove beneficial for all involved. Ameren also requests that the IPA identify the statutory provisions that would allow the Commission to order the suppliers to sign an amendment. Doing so would mitigate Ameren's concern that it would be put in a position of enforcing the signature of an addendum, with no clear authority to do so. Ameren Rev. Obj. at 5-6.

Ameren notes that the JSPs recommend that the Commission consider a departure from the normal contract-drafting approach and provide a series of proposed contract amendments. Ameren objects to the JSPs' proposed departure from the normal contract-drafting approach and contract amendments. These proposed contract amendments are outside of the scope of this proceeding, which reopened this docket for the limited purpose of considering the budget shortfall for DY2021-2022 and approving an approach for the contract reductions necessitated by that shortfall. In addition, the

proposals run contrary to the role of the IPA's Procurement Administrator, which is to develop the contract language for review and comment by interested stakeholders. Ameren therefore recommends the Commission reject the JSPs' proposal to depart from the normal contract-drafting approach and also reject the proposed contract amendments. Ameren Resp. at 9.

In its Response, the IPA states that it does not necessarily agree that the effort and expense is so overwhelming, and notes that the Joint Solar Parties have already produced a draft amendment that could serve as an initial template. IPA Resp. at 19. Ameren does not agree with the IPA and stands by its comments and notes that the contract development process for multiple versions of the REC contracts for utility scale, ABP, and brownfield has already required a considerable amount of time and expense. The result is a myriad of contract versions and provisions that makes administration extremely challenging. Given the current budget constraints, Ameren's simplified approach has merit. But under no circumstances, Ameren opines, should the contract terms be developed, even in draft form, by the JSPs. In addition, Ameren is concerned that the Joint Solar Parties are seeking provisions that are primarily beneficial to them and the JSPs represent only a subset of the Illinois REC suppliers. Ameren Rep. at 5-6.

Ameren believes the contract development process should remain with the IPA's Procurement Administrator which is then subject to stakeholder input and utility agreement. Ameren Resp. at 9. But given that the expense of contract development and contract administration directly impacts the REC budget, the Procurement Administrator should strive to keep this process as simple as possible. If a standardized amendment can be developed, it would result in cost savings and easier administration. Therefore, the Commission should adopt Ameren's proposal regarding the creation and adoption of a standardized addendum. Ameren Rep. at 6.

### **3. Clean Grid's Position**

To put the IPAs proposed reduction and deferral of payments into effect, the IPA proposes to develop and issue necessary REC delivery contract amendments. Clean Grid agrees with the approach IPA describes in Section 3.23.8, with a caveat that Section 3.23.8 should be consistent with the Commission's decision on Clean Grid's position regarding deferred payments. Clean Grid Obj. at 5.

Clean Grid also raises the issue of whether a seller under initial forward and other contracts could and should be allowed to terminate the contract. Clean Grid explains that the Event of Default provision does not apply because the buyers are unable to make payments due to causes outside of the buyers' control – insufficient funds collected pursuant to a statutory rate. The seller should not be required to accept the remedy proposed by the IPA in this proposal; forced to accept a delay of payment for a period of time that could be as much as six months. Clean Grid opines that seller should be given the option to either accept the deferral of payment proposal (or whatever remedy is approved in this docket) after receiving notice of a default in payment or be allowed to terminate the contract. Clean Grid Obj. at 4.

In its Response to Clean Grid, the IPA states that it "is generally fair to allow sellers the options to terminate their contracts if they do not find the Commission-approved remedy to be suitable." IPA Resp. at 14. Clean Grid understands, however, that the

IPA's response is not an acceptance of this proposal but a statement of willingness to discuss the proposal in the contract amendment process. Clean Grid Rev. Rep. at 11. Therefore, Clean Grid requests the Commission provide guidance in this Order regarding the gap in the contract default provisions and find that the seller in the Initial Forward and Other Forward contracts has the option to terminate the contract if payment on RECs they generate and deliver during the DY2021-2022 is deferred to the following delivery year. This clarification is well within the Commission's authority (220 ILCS 5/16-111.5(b)(5)(ii)(D)) and consistent with Illinois law. Schwinder v. Austin Bank of Chicago, 348 Ill.App.3d 461, 468 (1st Dist. 2004) ("... parties to an existing contract may, by mutual assent, modify the purchase contract provided that the modification does not violate law or public policy" citing 17A Am.Jur.2d Contracts § 500 (1991)). In addition, adding a material change, such as a standardized addendum as Ameren is requesting and which a seller may not agree to be bound by, reinforces the need for sellers to have the option to terminate the contracts. Clean Grid Rev. Rep., at 11.

Clean Grid also raises the issue of whether a seller in the initial forward and other Contracts should be refunded its performance assurance payment if it is allowed to terminate the contract. The security payments are collateral to assure performance by the seller on the contract. Clean Grid Obj. at 5. In response, the IPA recommends "that the question of the performance assurance refund be addressed through the contract amendment process with specific remedies in place to prevent gamesmanship by the seller." IPA Resp. at 14. Clean Grid counters that if the contract is terminated by the seller, for no fault of the seller, the performance assurance payment is to be returned. If the performance assurance is not refunded in this instance, where the seller has done nothing to cause this problem, the state receives a windfall and the seller is punished for actions outside of the seller's control. Clean Grid Rev. Rep. at 12-13.

Ameren proposes that Clean Grid's proposal to refund performance assurance payments should only apply to energized projects that incur a payment reduction. Clean Grid disagrees. First, the contract is effective and binding as of the date of execution, irrespective of the project being or not being energized. Second, limiting the sellers that can terminate a contract to a subcategory of contract—holders that are energized is either a material change to the contract or a limitation of that class of the seller's common law right to accept a remedy or file a notice of termination (or attempt to negotiate a termination). Clean Grid Rev. Rep. at 13.

#### **4. Staff's Position**

Staff agrees with the factual process the IPA sets forth in the Modified Revised Plan for the process for developing contract language (the IPA's Procurement Administrator develops draft contract language consistent with the Commission's Order; Draft contracts are published for comment and feedback; Final language achieved with the consensus of the IPA, Commission Staff, the Procurement Administrator, Procurement Monitor (where applicable), and the counterparty utilities), and Staff sees no reason to diverge from that process. Therefore, Staff recommends that process be followed for these amendments and that the JSPs' proposal be rejected. Staff Rep. at 20.

Staff notes that the IPA points out: (1) the IPA publishes draft contracts for all interested parties to provide input; (2) consensus of the groups is not required; and (3) approving a contract amendment within the docket before the Commission approves a regime for prioritization of obligations under the RPS is putting the proverbial cart before the horse. IPA Resp. at 20-21; Staff Rep. at 20.

Staff continues to recommend that the parties drafting the contract amendments use contract terms that, to the extent logical and practical, can be used in separate amendments for the various REC delivery contract types in question. Staff sees no value in the Commission Order specifying that a single standardized addendum is the required outcome of the collaborative contract addendum development process. Staff Rep. at 21.

Staff notes Ameren's concern that it is possible that REC delivery contracts may not be amended and therefore requests that the a statutory cite for the authority to amend the REC delivery contracts be included. Staff does not agree with Ameren's concern, and it is Staff's position that the Commission has the authority to approve amendments to REC delivery contracts. The authority for such amendments arises from Section 16-111.5(b)(5)(ii)(D) of the Act. Pursuant to that section, the Act authorizes the Commission to approve revised LTRRPPs ("... The Commission shall approve the initial long-term renewable resources procurement plan and any subsequent revisions..." and to approve the contracts "[t]he Commission shall also approve the process for the submission, review, and approval of the proposed contracts to procure renewable energy credits or implement the programs authorized by the Commission pursuant to a long-term renewable resources procurement plan approved under this Section.") 220 ILCS 5/16-111.5(b)(5)(ii)(D). If there was no authority for the Commission to approve amendments to existing contracts to procure renewable energy credits, then the Commission would not be able to authorize revisions to LTRPPs, which the Act clearly authorizes. For that reason, Staff believes that the Commission has the authority to approve amendments to the contracts. Staff Rep. at 22.

For the reasons set forth above Staff continues to take the position that the contracts can be amended and there is statutory authority to do so. In addition, Staff agrees that the REC sellers will have a substantial incentive to sign a contract amendment if termination of the existing contract is the possible alternative. Staff Rep. at 22.

In response to Clean Grid's position that sellers should be allowed to terminate their contract, Staff states that its initial position was that the delivery contracts could be terminated through an amendment to the contract. Staff Resp. at 13-14. After review of the IPA's Response and their concern for gamesmanship, however, Staff does not oppose the IPA's proposal that the issue be addressed through the contract amendment process with specific remedies to prevent gamesmanship by sellers. Staff Rep. at 24.

## **5. IPA's Position**

In Section 3.23.8 of its Proposed Language, the IPA outlines a process for the development of an amendment to REC delivery contracts affected by contract reduction/deferral under the modifications to the Revised LTRRPP. The IPA explains that this approach is consistent with the Commission-approved process already utilized to develop REC contracts under programs and competitive procurements, specifically under Section 16-111.5(e)(2) of the Act and Section 6.7 of the IPA's LTRRPP. IPA Resp. at 18.

Clean Grid supports the proposal to utilize the process outlined by the IPA, and notes that the option for sellers under initial forward and other forward procurements should be given the option to terminate an impacted contract. The IPA generally supports the inclusion of language in the contract amendment which expressly addresses the manner in which performance assurance in such a scenario may be refunded, if any, but the IPA has concerns that given the small deferral of expenses involved for utility-scale project contracts, a refund of performance assurance may be inappropriate. IPA Resp. at 18-19.

The IPA notes that Ameren suggests that parties to the contracts could mitigate the effort and expense through a standardized addendum and requests that the IPA identify the statutory provisions that would allow the Commission to order suppliers to sign a contract amendment. The IPA does not necessarily agree that the effort and expense is so overwhelming, and notes that the JSPs have already produced a draft amendment that could serve as an initial template. Regarding supplier execution of a contract amendment, the IPA believes that if a party to an instrument funded under the RPS does not elect to sign an amendment developed under this process, the terms of that existing instrument will govern payment obligations, and those instruments lack payment deferral provisions. Because reliance on existing contract terms may result in possible suspension or termination of payment obligations, the IPA believes that a seller would be incented to execute an amendment designed to ensure full payment. Regarding standardization, the IPA agrees that standardization is an advisable objective. That said, the IPA believes that any contract amendment will need to be standardized insofar as it reflects determinations made by the Commission in this proceeding, but adapted to the specific instrument which it serves to amend. IPA Resp. at 19.

The Joint Solar Parties urge the Commission to depart from the IPA's typical contract-drafting approach in favor of an approach wherein the Commission would approve specific contract amendment language in this proceeding. The IPA states that because the substance of the REC delivery contract amendment is dependent upon the conclusions of the Commission in this proceeding, approving an amendment now creates a sequencing issue in the simultaneous development of the LTRRPP language and the contract amendment. According to the IPA, development of a contract amendment before the Commission approves a regime for the prioritization of obligations under the RPS is established is putting the proverbial cart before the horse – or in this case, several carts, as there are multiple instruments that may be affected by the Commission's actions. IPA Resp. at 20.

While the JSPs complain that industry groups and utility counterparty representatives would not be at the table for drafting of the amendment and thus must rely upon others to represent their interests, the IPA responds that the JSPs' organizations and members do regularly participate in the contract development process. While the consensus of these groups is not required to finalize a contract, the IPA believes that because those who are affected by the amendment will have the opportunity to provide feedback, the existing REC contract development process is a usable process for developing a contract amendment. Additionally, because the IPA's Procurement Administrator (NERA Economic Consulting) has drafted the core of the contract form for all REC delivery contracts potentially subject to reduction, dating back to the 2010

LTPPAs, the IPA argues that not leveraging its Procurement Administrator's expertise in developing contract amendments would be a mistake. IPA Resp. at 20-21.

## **6. Commission Analysis and Conclusion**

The Commission finds that adoption of specific contract terms is outside the scope of this reopening. Moreover, there has not been a sufficient record developed on which to make a reasoned decision regarding contract terms. Also, importantly, as noted by Ameren, adopting a specific contract at this point is outside the normal drafting process. Staff explains that the process includes the following: 1) the IPA's Procurement Administrator develops draft contract language consistent with the Commission's Order; 2) draft contracts are published for comment and feedback; and 3) final language is achieved with the consensus of the IPA, Staff, the Procurement Administrator, Procurement Monitor (where applicable), and the counterparty utilities. The Commission finds this process to be consistent with the Commission-approved process already utilized to develop REC contracts under programs and competitive procurements and is consistent with Section 16-111.5(e)(2) of the Act.

The Commission finds Ameren's concept of a standardized addendum appealing. The Commission, however, will not make this a requirement as there are numerous contract versions that will be impacted, and it cannot be said on the record presented that all can be treated the same. Rather, the Commission adopts the Staff recommendation that the parties drafting the contract amendments use contract terms that, to the extent logical and practical, can be used in separate amendments for the various REC delivery contract types in question.

Because the IPA has indicated that it believes funding will be available for the utilities to make full contract payments through the end of the year, the Commission finds that there is time for the contract(s) to be amended through the process normally employed. In their Reply to Responses, the JSPs suggest that the process for developing a contract amendment should be completed by July 1, 2021. In its Brief on Exceptions, however, the IPA clarifies that a July 1, 2021 deadline is unworkable and suggests August 31, 2021 as a reasonable target date for finalization of the contract amendment. The Commission accepts the IPA's explanation. An August 31, 2021 target deadline is reasonable and will give all parties certainty going forward. It is adopted.

Clean Grid makes various arguments regarding contract interpretation and REC sellers' rights to terminate. Relatedly, the JSPs propose that utilities be directed not to invoke suspension under the currently existing ABP REC contracts until at minimum 30 business days after a contract amendment is approved. The Commission finds these proposals to be outside the scope of this reopening and also impossible to make a reasoned decision based on this record. It is clear that these concerns are more appropriately addressed in the normal contract-drafting process at the IPA, where all parties will have input.

The Commission also declines to act on Ameren's concern that the Commission may not have authority to order each seller under a REC Contract to sign the amendment. Not only does the Commission agree with Staff's statutory interpretation, but the Commission agrees with the parties that the status quo and its negative impacts and

uncertainty are most likely a sufficient motivator for sellers to sign the amendment in a timely fashion.

## **V. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having reviewed the entire record, is of the opinion and finds that:

- (1) Commonwealth Edison Company, Ameren Illinois Company d/b/a Ameren Illinois and MidAmerican Energy Company are corporations engaged in the retail sale and delivery of electricity to the public in Illinois, and each is a "public utility" as defined in Section 3-105 of the Public Utilities Act and an "electric utility" as defined in Section 16-102 of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (3) the recitals of fact and conclusions of law in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (4) the Revised Long-Term Renewable Resources Procurement Plan, as modified herein, will reasonably and prudently accomplish the requirements of Section 1-56 and subsection (c) of Section 1-75 of the Illinois Power Agency Act;
- (5) the Revised Long-Term Renewable Resources Procurement Plan, as modified herein, should be approved by the Commission; and
- (6) the Illinois Power Agency should file a compliance filing within 10 days of this Order consistent with the findings herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Revised Long-Term Renewable Resources Procurement Plan is hereby modified as specified in the prefatory portion of this Order.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that pursuant to Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code 200.880, any application for rehearing shall be filed within 30 days after service of the Order on the party.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 27th day of May, 2021.

(SIGNED) CARRIE ZALEWSKI

Chairman