COMMENTS OF THE RENEWABLES SUPPLIERS
ON THE ILLINOIS POWER AGENCY'S
DRAFT 2015 ELECTRICITY PROCUREMENT PLAN

I. Introduction

These comments on the Illinois Power Agency's ("IPA") draft 2015 Electricity Procurement Plan ("Draft Plan") are submitted by the following companies (collectively, the "Renewables Suppliers"):

- Algonquin Power Company and its subsidiary project company GSG 6, LLC.
- EDP Renewables North America LLC and its subsidiary project companies Blackstone Wind Farm, LLC, Meadow Lake Wind Farm, LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm III LLC and Meadow Lake Wind Farm IV LLC.
- Iberdrola Renewables LLC and its subsidiary project company New Harvest Wind LLC.
- Invenergy LLC and its affiliated project companies Grand Ridge Energy IV LLC and Invenergy Illinois Solar I LLC.
- NextEra Energy Resources, LLC and its subsidiary project company FPL Energy Illinois Wind, LLC.

Each of the project companies holds a long-term power purchase agreement ("LTPPA") with one of the electric utilities to supply electricity from renewable resources bundled with the associated renewable energy credits ("RECs"). The Renewables Suppliers actively participated in the Commission proceeding concerning the IPA's 2014 Procurement Plan, Docket 13-0546, including the rehearing in that docket.

The Renewables Suppliers have comments on the Draft Plan in the following areas:

1. The Renewables Suppliers are concerned about the IPA's proposal to use the electric utility's accumulated hourly ACP ("HACP") funds to purchase RECs from distributed generation ("DG") resources pursuant to 5-year contracts, coupled with IPA's proposal for "pre-approval" of curtailments of the LTPPAs if necessary based on the utilities' March 2015 load forecast updates. The IPA's proposals could result in a situation in which the LTPPAs are curtailed based on the March 2015 load forecasts, but the utilities' HACP funds have been committed for a use other than the purchase of curtailed LTPPA RECs that was approved in the Docket 13-0546 Rehearing Order. Diversion of the HACP funds to purchase DG RECs would be a significant departure from the Commission's recent policy decision in the Docket 13-0546 Rehearing Order to use these funds to purchase curtailed LTPPA RECs under a defined pricing formula. The Commission's decision in the Docket 13-0546 Rehearing Order was intended to provide a long-term solution to the revenue uncertainty that curtailments of the LTPPAs has created for current and prospective suppliers of renewable energy to the Illinois market.

However, many aspects of the IPA's proposal to use the HACP funds to purchase DG RECs pursuant to 5-year contracts are unclear in the Draft Plan. The Renewables Suppliers recommend that the IPA Plan filed with the Commission should (1) provide more discussion of the mechanics of the proposed DG REC purchases using the HACP funds and the extent to which the anticipated balances of HACP funds would have to be used for the DG REC purchases; and (2) provide additional analyses to test the robustness of the assumption that no

LTPPA curtailments will be required in 2015-2016 or the succeeding 4 years. In any event, the IPA Plan should provide that use of the HACP funds to purchase DG RECs in 2015-2016 shall be conditional on there being no LTPPA curtailments in 2015-2016; and should specify that the purchase of curtailed LTPPA RECs shall always be the first use of the HACP funds.

2. Based on the Docket 13-0546 Rehearing Order, the IPA Plan should identify the use of the Annual Contract Value ("ACV") method versus the Annual Contract Quantity ("ACQ") method for allocating the utilities' HACP funds among the LTPPAs for the purchase of curtailed RECs, as a topic that is supposed to be given further consideration in the Commission proceeding on the 2015 Plan.

3. If, in the initial months of a new delivery year, an LTPPA Supplier is still delivering non-curtailed RECs attributable to the prior delivery year to make up for a short-fall situation (as required by the terms of the LTPPAs), the utility should be required to accept and pay for (using its HACP funds from the preceding delivery year, to the extent still available) the associated curtailed RECs for the preceding delivery year, even though the curtailed RECs are generated in months subsequent to the end of the preceding delivery year.

II. <u>Detailed Discussion of the Renewables Suppliers' Comments</u>

A. Proposed Use of the Electric Utility Hourly ACP Funds

At page 94, the Draft Plan states: "[F]or the 2013-2014 and 2014-2015 Delivery Years, the Commission approved the use of [the electric utilities'] hourly ACP funds to purchase RECs from any curtailed LTPPAs, and the IPA recommends a continuation of that policy." Contradicting this recommendation, however, the IPA proposes that for 2015-2016, the utilities' balances of HACP funds should be used to purchase RECs from DG resources though 5-year contracts, pursuant to §1-75(c)(1) of the IPA Act. Draft Plan at 2, 4, 91, 94. In fact, the Draft Plan states that for 2015-2016, "the IPA does not recommend the use of Alternative Compliance Payments collected from customers on hourly pricing to purchase curtailed RECs." *Id*. at 2. The proposed use of HACP funds to purchase DG RECs is premised on the assumption that, based on the utilities' July 2014 load forecasts, "curtailment of the LTPPAs appears unlikely in 2015-2016." *Id.* at 94. The IPA proposes purchases of DG RECs using the HACP funds through 5-year contracts, as required by §1-75(c)(1). Draft Plan at 98. The Renewables Suppliers have several concerns about the proposed use of the HACP funds to purchase DG RECs.

1. The Renewables Suppliers are concerned about use of the HACP funds for a purpose other than purchasing curtailed RECs resulting from curtailment of the LTPPAs. The IPA's proposal would be an abrupt departure from the policy determination the Commission made in the Docket 13-0546 Rehearing Order, where the Commission approved the Renewables Suppliers' proposal that HACP funds be used to purchase curtailed LTPPA RECs at a price equal to the LTPPA Contract Price less the Day-Ahead Hourly Locational Marginal Price ("DAH-LMP"). The Renewables Suppliers presented this proposal as a <u>long-term</u> solution to the revenue uncertainty that curtailment of the LTPPAs has created for current and prospective suppliers of electricity from renewable resources to the Illinois market. The Renewables Suppliers are concerned, therefore, that in its Draft Plan for the very next year following the Rehearing Order, the IPA is proposing to deviate from the Commission's determination made just a few months ago, by putting the HACP funds to a different use than purchases of curtailed LTPPA RECs. The IPA's proposal would bring back the annual uncertainty over curtailments and alternative sources for purchase of curtailed LTPPA RECs that the Renewables Suppliers

thought was resolved (or at least mitigated) by the Commission's adoption of the Renewables Suppliers' proposal in the Docket 13-0546 Rehearing Order.[1]

The IPA's proposal to use the HACP funds to purchase DG RECs appears to be motivated by the fact that the utilities are not meeting the goals for purchases of RECs from DG specified in §1-75(c)(1). Draft Plan at 94. The fact is, however, that none of the RPS goals of §1-75(c)(1) are being met, at least not through purchases to serve eligible retail customers. The RPS goals that the IPA intended to be met through the LTPPAs are not being met due to the curtailments. There is no basis to give one part of the statutory RPS requirements preference over other parts of the RPS requirements. Further, purchase of DG RECs using the HACP funds would insulate the DG REC purchase contracts from curtailments (as the Draft Plan recognizes, at 91 and 94-95), while the LTPPAs would continue to be at risk of curtailment due to the §1-75(c)(2) rate caps and the migration of eligible retail customers from the utilities. Again, there is no basis to elevate one set of RPS contracts to a more favored economic position than other RPS contracts. Indeed, the IPA's proposal to use the HACP funds to purchase DG RECs, rather than to purchase curtailed LTPPA RECs as ordered by the Commission in the Rehearing Order, is exactly the type of inconsistent, unpredictable approach that (as Renewables Suppliers' witnesses testified in the Docket 13-0546 rehearing) has made current and potential renewable energy suppliers reluctant to develop new projects in or to serve the Illinois renewables market.

2. Having noted their concerns in point 1 above, the Renewables Suppliers do not object to using HACP funds to purchase DG RECs <u>if and to the extent that the HACP funds are not needed to purchase curtailed RECs from the LTPPAs</u>. The IPA's proposal to use the HACP funds to purchase DG RECs is premised on the fact that the utilities' July 2014 load forecasts indicate no need for LTPPA curtailments in 2015-2016. However, the IPA proposes that (as has been the case in prior years), the need for an LTPPA curtailment should be determined by the utilities' March 2015 load forecasts. Further, the IPA recommends that the Commission's December 2014 order on the IPA Plan should "pre-approve" an LTPPA curtailment if the utilities' March 2014 load forecasts shows one is necessary. Draft Plan at 2, 4, 91.

Thus, the IPA's proposal creates the possibility that (1) a purchase of DG RECs pursuant to 5-year contracts, using the HACP funds, could be approved in the December 2014 order, premised on the assumption that there will be no LTPPA curtailments in 2015-2016; but then (2) a LTPPA curtailment could occur based on the utilities' March 2015 load forecasts, with the HACP funds already having been committed to a use other than purchase of curtailed LTPPA RECs at the pricing approved in the Docket 13-0546 Rehearing Order.

Recent experience shows that this is by no means an unrealistic concern. ComEd's and Ameren's March 2014 load forecasts changed so significantly from their July 2013 forecasts that the indicated curtailments of LTPPAs fell from 19.6% to approximately 7% for ComEd and from 7.6% to zero for Ameren. While these were changes in the direction of reducing the LTPPA curtailment, it is conceivable that changes of similar magnitude could occur in the opposite direction from the utilities' July 2014 load forecasts to the March 2015 load forecasts.

Another concern is that the Draft Plan is unclear as to the duration for which HACP funds

[1] Importantly, the Renewables Suppliers' proposal that the Commission adopted provides significantly greater revenue certainty than does the IPA's purchase of curtailed RECs, using the Renewable Energy Resources Fund ("RERF"), at the implied REC price of LTPPA Contract Price less the projected energy price for the year from the IPA's 2010 forward energy price projection.

would be committed to the purchase of DG RECs. The IPA proposes 5-year DG REC purchase contracts, as required by statute. It is unclear if the IPA intends that (1) the 5-year DG REC contracts would be fully funded by the balance of HACP funds available at May 31, 2015, or (2) the annual purchases of DG RECs pursuant to the 5-year contracts would be funded by each year's balance of HACP funds. If the IPA is proposing the latter approach, the Renewables Suppliers have additional concerns: Although an LTPPA curtailment in 2015-2016 may be unlikely, the likelihood of curtailments becomes more difficult to forecast 3, 4 and 5 years out into the future. In fact, the Draft Plan explicitly recognizes that "in a future delivery year the load forecasts may be updated and differ significantly from what is shown here" and "future load forecasts could change and result in a curtailment of the existing LTPPAs." Draft Plan at 91.

The Renewables Suppliers are also concerned because it is unclear in the Draft Plan whether the IPA intends to also use monies from the balance of HACP funds as of May 31, 2014 to fund the DG REC purchases (in addition to the HACP funds that are accumulated from June 1, 2014 to May 31, 2015). The balance of ComEd's HACP funds as of May 31, 2014, is currently being used to purchase the LTPPA Suppliers' curtailed RECs for the 2014-2015 delivery year, in accordance with the Docket 13-0546 Rehearing Order. Although the 2014-2015 delivery year concludes on May 31, 2015, based on the ComEd contract for purchase of curtailed RECS, the final tendering of curtailed RECs to ComEd and settlement of these transactions may not be completed until September, 2015. The IPA should not commit any ComEd HACP funds from the balance as of May 31, 2014 until the settlement of purchases of curtailed LTPPA RECs for 2014-2015 is completed and it is determined that all 2014-2015 curtailed LTPPA RECs have been purchased. At that point, any HACP funds remaining from the balance at May 31, 2014 could be used for DG REC purchases.

3. To address (and potentially lessen or mitigate) their concerns, the Renewables Suppliers recommend the following specific revisions and additions to the Draft Plan:

a. For 2015-2016, the proposal to use a utility's HACP funds to purchase DG RECs should be <u>conditional</u> on the utility's March 2015 load forecast update showing no need for a LTPPA curtailment in 2015-2016.

b. Further, the IPA Plan (and the Commission's Order approving it) should specify that the purchase of curtailed LTPPA RECs shall <u>always</u> be the first use of the HACP funds. The annual balance of the utility's HACP funds should only be committed to the purchase of DG RECs (or other purchases) to the extent that the HACP funds are not needed to purchase curtailed LTPPA RECs.

c. The IPA Plan should specify that no ComEd HACP funds from the balance at May 31, 2014 will be used for DG REC purchases unless and until the settlements of purchases of curtailed LTPPA RECs for the 2014-2015 delivery year have been completed and all 2014-2015 curtailed LTPPA RECs have been purchased, in accordance with the Docket 13-0546 Rehearing Order.

d. The IPA Plan should explain whether the IPA intends that the proposed 5-year DG REC contracts would be fully funded from the May 31, 2015 HACP balance, or would be funded for each year of the contract from that year's available HACP balance. Stated differently: The IPA Plan should state whether IPA intends only to contract for an amount of DG RECs, in 5-year contracts, that can be fully funded from the available balance of the HACP funds at May 31, 2015.

e. The IPA Plan should provide additional discussion of the anticipated size of the DG REC procurement. The IPA Plan should also provide mathematical analysis of the projected cost of the DG REC contracts versus the projected balances of the utility's HACP funds. The purpose of the latter analysis would be to project the extent to which the proposed DG REC contracts would use the anticipated balances of HACP funds.

f. The IPA Plan should contain sensitivity analyses or alternative scenarios addressing the likelihood that LTPPA curtailments will be needed in 2015-2016. For example, the Ameren and ComEd July 2014 "base" load forecasts incorporate assumptions as to the percentage of residential and small commercial load in the utility's service area that will be served by ARES (or, stated differently, assumptions as to the percentage of the residential/small commercial load that the utility will serve as eligible retail customer load). The IPA Plan should analyze by how much the "switching percentages" would need to change (increase) from the utility's base forecast before an LTPPA curtailment became necessary in 2015-2016.[2] In summary, the IPA Plan should analyze the robustness of the assumption that no LTPPA curtailments will be necessary in 2015-2016 or for the subsequent four years.

4. The IPA's offer to use the RERF to purchase curtailed LTPPA RECs at the implied REC price, should a curtailment be necessary, is appreciated, but such purchases are an insufficient replacement for the purchase of curtailed RECs using the HACP funds at the pricing approved in the Docket 13-0546 Rehearing Order. The reason that the Renewables Suppliers presented their proposals in Docket 13-0546 was that the purchase of curtailed RECs at the implied REC price provides insufficient revenue recovery under the LTPPAs.

In this regard, the Renewables Suppliers' concerns over the use of the HACP funds would be greatly diminished or eliminated if the IPA were willing and able use funds in the RERF to purchase curtailed LTPPA RECs at the same pricing that was approved in the Docket 13-0546 Rehearing Order for purchases from the HACP funds (*i.e.*, LTPPA Contract Price less DAH-LMP). The IPA has a significant balance of unspent RERF funds (per the Draft Plan, projected to exceed $125,000,000 when the September 2014 ACPs are received), with only $30,000,000 "obligated" to be used for a supplemental purchase of RECs from photovoltaic sources (pursuant to recently-enacted §1-56(i) of the IPA Act). Draft Plan at 99. The Renewables Suppliers understand that the Commission does not have authority to direct the IPA as how or in what manner to use the RERF to make purchases, and this is not a topic that can be resolved in the Commission proceeding. However, the Renewables Suppliers would welcome the opportunity to explore with the IPA whether there are ways in which the RERF can be used to purchase curtailed LTPPA RECs at the pricing approved in the Docket 13-0546 Rehearing Order for purchases from the HACP funds.

B. Use of the "ACV" versus "ACQ" Approach in Allocating the Utility's HACP Funds Among the LTPPA Suppliers for the Purchase of Curtailed RECs

In the Docket 13-0546 Rehearing Order, the Commission approved the use of the "Annual Contract Value" ("ACV") approach, rather than the "Annual Contract Quantity" ("ACQ") approach, for determining how the May 31, 2014 balance of ComEd's HACP funds should be allocated among the LTPPAs for the purchase of curtailed RECs. The approved

[2] For example, if the switching percentage has to increase by 10 percentage points from the base forecast in 2015-2016 before a curtailment is needed, that indicates a greater likelihood of no curtailment than if the switching percentage only has to increase by 2 percentage points to cause a curtailment.

method included a procedure for reallocating any "surplus" HACP funds among the LTPPA Suppliers at the end of the year, if necessary. The Rehearing Order also stated that the ACV method should only be used for 2014-2015, and that what allocation method should be used would be reviewed again and determined in the IPA Procurement Plan case for 2015-2016. Docket 13-0546 Rehearing Order at 56. Since this topic is one that the Docket 13-0546 Rehearing Order specified should be revisited in the 2015-2016 IPA Plan proceeding, the Renewables Suppliers recommend that the IPA Plan identify this topic as one that is to be addressed in the Commission proceeding. (The Renewables Suppliers note, however, that this is a topic that probably is better revisited in the context of an IPA Plan for a year in which a LTPPA curtailment is actually expected.)

C. Administrative Issue Associated with the Purchase of Curtailed RECs

This section identifies an administrative issue that NextEra Energy Resources, LLC ("Next Era") and its project subsidiary FPL Energy Illinois Wind, LLC ("FPL Illinois") have encountered due to the intersection of the LTPPA with the procurement of curtailed RECs by ComEd using the HACP funds. This issue may prevent FPL Illinois from being able to sell its full amount of curtailed RECs for 2014-2015 to ComEd, even if ComEd has sufficient HACP funds to make the purchases. Resolution of the issue does not require a change to the LTPPA; it can be addressed through the form of contract for curtailed REC purchases with HACP funds. This issue should be addressed in the upcoming Commission proceeding so that it is resolved, to the extent possible, for any future years in which LTPPA curtailments occur.

The ComEd LTPPAs provide that if, at the end of a delivery year, the LTPPA Supplier has delivered less than 100% but more than 90% of its Annual Contract Quantity, its deliveries at the start of the next year are used to make up the short-fall.[3] It is only after the Supplier's deliveries reach 100% of ACQ for the previous year that its deliveries begin to count toward the current year's ACQ. Additionally, if there is a curtailment, the percentage of the plant output that the Supplier can deliver in each hour (referred to in the LTPPA as the "Applicable Percentage") is reduced by the curtailment percentage.[4] If the Supplier starts the new delivery year still delivering RECs to make up an ACQ shortfall for the previous year, the curtailment percentage and the Applicable Percentage from the preceding year are used until the ACQ shortfall is made up, at which point the current year's curtailment percentage and Applicable Percentage go into effect for the remaining REC deliveries from the facility in that year.

FPL Illinois began the 2014-2015 delivery year in a short-fall situation from the preceding (2013-2014) delivery year. Further, because the 2013-2014 curtailment percentage was 18.6%, FPL Illinois' Applicable Percentage, and thus the amount of RECs it could deliver in any hour, continued to be significantly reduced going into the new (2014-2015) delivery year. It was not until July 2014 that FPL Illinois had delivered sufficient RECs to ComEd to make up the 2013-2014 shortfall and reach 100% of the adjusted (for the curtailment) 2013-2014 ACQ. The application of the 18.6% curtailment percentage for 2013-2014 to deliveries after May 31, 2014 increased the difficulty of, and increased the time needed to deliver RECs to, make up the 2013-

[3] If, at the end of the delivery year, the LTPPA Supplier has delivered less than 90% of its ACQ, the Supplier can make up the short-fall up to 90% of its ACQ by delivering "replacement RECs" which can be purchased from another source (rather than generated from the facility that holds the LTPPA).

[4] For example, if the Applicable Percentage per the LTPPA (which is the portion of the facility's output contracted under the LTPPA) is 70% and the curtailment percentage for the year is 10%, the Applicable Percentage for the year becomes 0.70 X 0.90 = 63%.

2014 ACQ shortfall.

The upshot of the foregoing circumstances, and taking into account the maximum potential hourly output of FPL Illinois' wind farm, is that FPL Illinois may be unable to deliver the full 2014-2015 ACQ (as adjusted by the 2014-2015 curtailment percentage) by May 31, 2015. Should this occur, then, as required by the LTPPA, FPL Illinois will be continuing to deliver short-fall 2014-2015 RECs to ComEd for some period of time after May 31, 2015. However, per the contract tendered by ComEd for the purchase of curtailed 2014-2015 RECs using HACP funds, FPL Illinois will <u>not</u> be allowed to deliver to ComEd, and be paid for, curtailed RECs with a vintage later than May 2015. In other words, although FPL Illinois will be <u>obligated</u> to deliver to ComEd non-curtailed RECs with vintages of June 2015, July 2015, and possibly later months to make up the shortfall of 2014-2015 non-curtailed RECs, FPL Illinois will <u>not</u> be allowed to deliver and be paid for the associated <u>curtailed</u> RECs with June 2015, July 2015 or later vintages.

To address this situation, NextEra believes that ComEd should be required to accept and pay for curtailed RECs of the same month's vintages as the associated non-curtailed RECs.[5] So long as the LTPPA Supplier is delivering the non-curtailed RECs and energy attributable to the prior year to make up a short-fall situation, the LTPPA Supplier should also be allowed to deliver the prior year curtailed RECs associated with the prior year non-curtailed RECs and energy. This would not require a modification to the LTPPA, but only a change to the form of contract that ComEd developed for the purchase of curtailed RECs using HACP funds. This approach would "match" curtailed RECs with the associated non-curtailed RECs generated by the supplier in each period. It would be consistent with the settlement mechanism for the utility's purchases of curtailed RECs that the Renewables Suppliers presented in the Docket 13-0546 Rehearing, under which the utility would settle with the LTPPA supplier each month for the curtailed RECs on the basis of the same price data used to settle the non-curtailed part of the LTPPAs, *i.e.*, the Contract Price less the DAH-LMPs in that month. (Rebuttal Testimony of Craig A. Gordon, Renewables Suppliers Ex. 1.2, at lines 231-235.) This approach would ensure that a LTPPA Supplier in a shortfall situation for the prior year will receive payment for its full complement of curtailed RECs (to the extent permitted by its allocated share of the utility's HACP funds).

This issue is a proper topic for the IPA Plan, and the Commission proceeding to approve it, because the IPA Plan and Docket 13-0546 Rehearing Order are the source of the requirement that the HACP funds should be used to purchase curtailed LTPPA RECs. The Renewables Suppliers request that the IPA identify and address this issue in the Plan that is filed with the Commission, so that the issue may be addressed in the Commission proceeding.

Respectfully submitted,

RENEWABLES SUPPLIERS

By: /s/ Owen E. MacBride
Owen E. MacBride

[5] To be clear, the purchases of these RECs would only be made from the balance of HACP funds that had been available at June 1 of the start of the "curtailment year" *i.e.*, June 1 of the preceding calendar year), as allocated (or re-allocated) to the LTPPA Supplier pursuant to the ACV method adopted in the Docket 13-0546 Rehearing Order.

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