STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Power Agency	)	
	)	ICC Docket No. 19-0995
Petition for Approval of IPA's Revised Long-	)	
Term Renewable Resources Procurement Plan	)	
Pursuant to Section 16-111.5(b)(5)(ii)	)	
of the Public Utilities Act.	)	

VERIFIED PETITION FOR REOPENING ON THE COMMISSION'S OWN MOTION
ON BEHALF OF THE ILLINOIS POWER AGENCY

Pursuant to Section 10-113 of the Public Utilities Act and Sections 200.900 and 200.190 of the Commission's Rules of Practice, the Illinois Power Agency ("IPA" or "Agency") respectfully petitions the Illinois Commerce Commission ("Commission" or "ICC") to reopen the above-captioned proceeding on its own motion in order to approve certain modifications to the Agency's Revised Long-Term Renewable Resources Procurement Plan necessitated by the COVID-19 global health pandemic, that pandemic's impact on new renewable energy project development timelines, and the impact of those development timeline changes on available Renewable Portfolio Standard ("RPS") funding.

As described further below, because renewable energy credit ("REC") delivery contracts provide payment only once applicant systems are energized, project energization delays resultant from the pandemic have aggressively shifted projected RPS budget expenses chronologically forward into future delivery years. Section 16-108(k) of the Public Utilities 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. After revising its RPS budget projections based on energization deadline extension requests received from renewable energy project developers, the Agency now projects that contracted RPS expenses for the 2021-2022 delivery year will exceed funding available during that delivery year.

To maintain the integrity of Section 1-75(c)(1)(E) of the Illinois Power Agency Act's cap on the rate impact of RPS expenditures, 2021-2022 delivery year expenses must be reduced to the level of available funds, thus requiring a reduction in payments for projects under existing contracts. As this budget shortfall was unanticipated previously, the Revised Plan approved by the Commission on February 18, 2020 projects sufficient RPS funding availability for the 2021-2022 delivery year and lacks any proposal for how expenses must be reduced in the case of funding insufficiency. The Agency thus respectfully requests that the Commission reopen this proceeding for the limited purpose of approving modifications to the Revised Plan for addressing this unfortunate and unanticipated funding shortfall.

BACKGROUND

Changes to Illinois law enacted through Public Act 99-0906 (the Future Energy Jobs Act or "FEJA") included revisions to the IPA Act establishing ambitious targets for REC procurements to meet the state's Renewable Portfolio Standard, or RPS. The Illinois Power Agency's proposals for how to meet those RPS targets were to be included in a new "Long-Term Renewable Resources Procurement Plan" filed with the Illinois Commerce Commission for approval under Section 16-111.5(b)(5) of the Public Utilities Act. Required to be updated every two years, that Plan serves as the document governing RPS implementation in Illinois. In accordance with Section 16-111.5(b)(5) of the PUA, the Agency developed, and the Commission approved, the IPA's initial Long-Term Renewable Resources Procurement Plan through ICC Docket No. 17-0838. The Commission likewise approved the Agency's first Revised Long-Term Renewable Resources Procurement Plan ("Revised Plan") on February 18, 2020.

The Agency filed that Revised Plan with the Commission for approval in October of 2019. In Chapter 3 of the Revised Plan as originally filed, the IPA included tables projecting sufficient funding availability to meet expected RPS expenditures based upon projected collections under Section 16-108(k) of the PUA and available alternative compliance payments. While funding was projected to be insufficient in future years to support *additional* program and procurement activity, the Agency's analysis demonstrated RPS budget funding sufficient to pay through any program and procurement activities already approved.

The Commission's Order approving Revised Plan was entered on February 18, 2020; that Order included instruction that, within 60 days, the IPA file a Plan modified for consistency with the Commission's determinations. During the period between Commission approval of the Revised Plan and the IPA's filing of that modified, "Final" Revised Plan 60 days later, the COVID-19 global health pandemic began to take hold. While the eventual effect of the COVID-19 pandemic was still unpredictable at that time, the possibility of project development challenges and accompanying restrictions on public activities throughout the United States caused the Agency to include a preliminary assessment of the pandemic's potential impact on RPS activities. That analysis – included as a new Section 3.20.1 within the IPA's Final Revised Plan – demonstrated that if widespread project energization delays resulted from the COVID-19 pandemic, the available RPS budget for the 2021-2022 delivery year could face a funding deficit.

Under Section 3.22 of the Revised Plan, the IPA committed to provide biannual reviews of updated utility load forecasts and contractual payment obligations. After receiving over 1,000 energization deadline extension requests since the onset of the pandemic, the Agency readjusted its forecasts for REC delivery contract expenditures and published its RPS Funding & Budget Update on December 28, 2020.[1] That Update identified that the statewide RPS budget was now

[1] The IPA's December 28, 2020 RPS Funding & Budget Update can be found here: https://www2.illinois.gov/sites/ipa/Documents/RPS%20Funding%20and%20Budget%20Update%20(28%20Dec%202020).pdf

projected to face an estimated shortfall of $67 million in the 2021-2022 delivery year due to the coincidence of a significant shift in energization dates as a result of pandemic-related delays with the end of the initial four-year collection of RPS funds under Section 16-108(k) of the PUA.[2] As a result of this projected funding shortfall, reductions in payments for obligations paid out in the 2021-2022 delivery year under Commission-approved contracts will be required.

Through this filing, the Agency seeks Commission approval of modifications to the Revised Plan adopting a governing regime to address this reduction in expenses across various categories of expenditures under the RPS. The IPA has provided, in conjunction with this Petition, proposed modifications to the Revised Plan.[3] Those proposed modifications include a detailed explanation of the circumstances surrounding the budget shortfall, including the March 2021 budget update; background on previous curtailments of contracts funded under the RPS collection; an explanation of current RPS expenditures; and a proposed approach to payment reduction based upon various statutory and policy considerations.

RPS FUNDING, RECONCILIATION AND COVID-19 ENERGIZATION DELAYS

To better illustrate the basis for this petition and the circumstances resulting in the RPS budget deficit, below is a brief overview of how RPS expenditures are collected and reconciled and a discussion of how COVID-19-related energization delays have created unexpected friction with that process and timeline.

Section 16-108(k) of the PUA provides a mechanism for utilities to recover costs associated with the purchase of renewable energy credits to meet the requirements of Section 1-75(c) of the

---

[2] An update to that analysis conducted by the Agency on March 1st confirmed that finding, but at a slightly lower statewide shortfall ($51.8 million). Tables resultant from that recent update can be found in the proposed Revised Plan modifications included with this filing.

[3] Modifications to the Revised Plan filed contemporaneously with this Petition are indicated in red font.

IPA Act. Effective June 1, 2017, the Commission-approved electric utility tariffs allocated costs across all retail customers in proportion to the amount of renewable energy resources each utility procures through a single, uniform cents per kilowatt charge through May 31, 2021. To date, the utility tariffs approved pursuant to Section 16-108(k) of the PUA have thus collected the statutory maximum amount from utility ratepayers to fund the RPS.

Beginning in the June 2021 monthly billing period, however, those tariffs begin to operate under a formula which includes a balancing adjustment to correct for any under-/over-collection of funds. The process for reconciling revenues collected under these tariffs against actual RPS costs can be initiated no earlier than August 31, 2021, with the first reconciliation period encompassing the first four delivery years under the revised RPS, and subsequent reconciliations to be conducted on an annual basis thereafter. Stated differently, prior delivery years' RPS budgets accounted for the entirety of all funds collected to date since June 1, 2017. But beginning within the 2021-2022 delivery year, future years' RPS budgets account for only that specific delivery year's budget, plus any alternative compliance payments authorized for meeting RPS obligations.

In allowing for this four-year initial collection period to build up the RPS fund, it appears that the drafters of FEJA at least in part recognized the extended development timeline associated with developing new renewable energy projects. But that four-year initial collection period has proven plainly insufficient for handling development timelines that have in some cases doubled or tripled in length due to COVID-19-related delays.

As explained in detail in the accompanying proposed modifications to the Revised Long-Term Plan, due to the COVID-19 pandemic, project energization dates originally established for the 2020-2021 delivery year have been frequently extended into the 2021-2022 delivery year – and beyond, as the Agency continues to see new energization requests as a result of the pandemic.

Because new renewable energy projects do not begin receiving REC delivery payments until energization, a significant portion of the originally-projected spend during the first four years of collections has shifted forward in payment dates, and forward to a period when previously collected funds can no longer be utilized to meet those expenses. Without a legislative change, the provisions of Section 16-108(k) prevent the collected – yet currently unspent – funds from being rolled over for future use beyond mid-2021.[4]

One consequence of this projected shortfall for the 2021-2022 delivery year is that significant uncertainty exists – both for Buyers (who may be uncertain when and how to reduce payments across different contract instruments) and Sellers (who may be concerned about the permanent loss of expected revenues associated with any payment reductions) – regarding how RPS obligations must be handled in the event of expenses exceeding available funds. Currently, projected RPS expenditures can be allocated into distinct categories, each of which is described in the accompanying proposed modifications to the Revised Plan. Expenditures projected be paid include those for 2010 Long-Term Power Purchase Agreements, 2015-17 Utility Distributed Generation Procurements, utility-scale wind procurements, utility-scale solar procurements, brownfield site photovoltaic procurements, Adjustable Block Program projects (which can be further discussed in the context of large distributed generation, small distributed generation, and community solar projects), Illinois Solar for All utility-counterparty REC delivery contracts, Illinois Solar for All job training funds, and administrative costs. Each of these categories involves

[4] Legislation moving this rollover sunset date forward to May 31, 2022 has been introduced in the 102nd General Assembly; see HB 3822 and SB 2433. At the time of this filing, neither bill has been assigned to committee. Should legislation eliminating a 2021-2022 delivery year RPS budget shortfall be enacted during the pendency of this proceeding, the IPA would likely file a motion to withdraw its prior-filed petition seeking reopening of this docket.

a different contract mechanism between the Buyer and Seller, and, in some cases, even further differences in the contracts among the Buyer-utilities.

Thus, in determining the need for contract reductions, the Agency cannot rely solely upon interpretation of existing REC delivery contracts. Not only do the contracts themselves vary, but the language therein regarding parties' responsibilities in the case of funding insufficiency is ambiguous, and thus insufficient on its own for determining the priority of payment across competing obligations. Furthermore, without the Commission's explicit approval of a payment reduction regime, priority could be applied differently by different Buyer-utilities or applied in a manner opposed by a Seller who disagrees with Buyer's contract interpretation. Providing much-needed clarity and certainty to both Buyers and Sellers of RECs under the RPS requires that the Commission reopen this proceeding and approve a modification to the Revised Long-Term Plan establishing a payment reduction approach outlining what priority—if any—should attach to various RPS expenditure categories, whether different RPS-related payments should be prioritized on some other basis, and by when any reductions in payment should begin being made.

IPA EXPENSE REDUCTION PROPOSAL

Accordingly, the Agency has proposed a regime in which certain statutory and policy considerations are accounted for in prioritizing and managing reductions in RPS-related 2021-2022 delivery year expenses. The Agency hopes this approach in turn provides Sellers with necessary revenue certainty and imbues Buyers with confidence in the prudency and reasonableness of their expenditures. The IPA proposes that this can be accomplished in the following way:

1. REC delivery contracts and other RPS obligations should continue to be paid in full for at least the first six months of the 2021-2022 delivery year.

2. By December 31, 2021, the Agency 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 the 2021-2022 delivery year, 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 and the 2015-2017 Utility Distributed Generation procurement expenses.
4. Illinois Solar for All contract expenses should be prioritized, and payments obligated under those REC delivery contracts should not be reduced.
5. The 2021-2022 delivery allocations for Illinois Solar for All, inclusive of the $10 million job training program allocation, should be maintained.
6. Any payment reductions implemented during the 2021-2022 delivery year should be prioritized as payments due in the first applicable invoicing cycle of the 2022-2023 delivery year.

This proposed approach to payment reductions, which is further articulated in the IPA's accompanying proposed Plan modification, ensures that REC delivery contract holders are, in all cases, ultimately made whole for performance and reduces the time period during which payment delays are felt by REC delivery contract holders to the maximum extent possible.

RELIEF REQUESTED

The Agency requests that the Commission exercise its authority to reopen this proceeding, on its own motion, for the limited purposes of considering the budget shortfall for the 2021-2022 delivery period and approving an approach for the contract reductions necessitated by that shortfall. Section 200.900 of the Commission's Rules of Practice provide that after the time to petition for rehearing has expired, a party may petition the Commission to reopen on its own motion any proceeding when "conditions of fact or law have so changed as to require … such reopening." Due to the COVID-19 pandemic and resultant renewable energy project energization delays, the facts and circumstances regarding available funding for RPS activities falling under the IPA's Revised Long-Term Renewable Resources Procurement Plan have changed in a manner that materially alters assumptions informing the Commission's prior, pre-COVID February 18, 2020 approval of that Plan. The IPA thus respectfully seeks reopening of ICC Docket No. 19-0995 for the limited purpose of modifying the Revised Plan to establish an approach to RPS-related payment reductions.

The IPA believes that both Buyers and Sellers under REC delivery contracts impacted by the budget shortfall will benefit from clarity surrounding the approval of an approach to payment reduction. The Agency appreciates that the interests of Buyers and Sellers under the impacted contracts vary widely and does not anticipate that there will be unanimous support for the proposal set forth with this Petition. All parties to the proceeding should have an opportunity to address the proposal and provide alternatives. Accordingly, assuming the Commission agrees and reopens this proceeding on its own motion at its March 18, 2021 Regular Open Meeting, the IPA suggests the following schedule upon reopening:

Objections to Proposal	Due March 25, 2021
Responses to Objections	Due April 8, 2021
Replies to Responses	Due April 15, 2021
Position Statements/Draft Orders	Due April 16, 2021
ALJ Proposed Order	Issued April 30, 2021
Briefs on Exceptions	Due May 7, 2021

The Agency recognizes that this schedule provides a limited time for responses and replies; however, the issue is sufficiently narrow in scope to accommodate an accelerated schedule and timeline. Additionally, this proposed schedule allows for Commission approval of an approach to the anticipated reduction in contract obligations prior to the commencement of the 2021-2022 delivery year on June 1, 2021.

WHEREFORE, as set forth above, the Illinois Power Agency respectfully requests that the Illinois Commerce Commission reopen Docket No. 19-0995 on its own motion, for the narrow purpose of approving an approach for RPS-related payment reductions in the 2021-2022 delivery year due to the impact of the COVID-19 pandemic. Specifically, the Agency requests approval of the updated RPS budget tables in Section 3.23 of the modified Revised Plan text included with this filing, approval of its approach to contract reduction under the RPS also outlined in that Section, approval of a REC delivery contract amendment process in line with the Commission-approved payment reduction approach, and for any further relief the Commission deems appropriate and just.

Dated: March 3, 2021

Respectfully submitted,

Illinois Power Agency

/s/ Brian P. Granahan

Brian P. Granahan
Chief Legal Counsel
Illinois Power Agency
105 W. Madison St., Suite 1401
Chicago, Illinois 60602
312-814-4635
Brian.Granahan@Illinois.gov

STATE OF ILLINOIS)
)
COUNTY OF COOK)

VERIFICATION

Pursuant to 83 Ill. Admin. Code 200.130 and 735 ILCS 5/1-109, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Verified Petition for Reopening on the Commission's Own Motion are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Anthony Star

Anthony M. Star

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Power Agency	)	
	)	ICC Docket No. 19-0995
Petition for Approval of IPA's Revised Long-	)	
Term Renewable Resources Procurement Plan	)	
Pursuant to Section 16-111.5(b)(5)(ii)	)	
of the Public Utilities Act.	)	

NOTICE OF FILING

Please take notice that on March 3, 2021, the undersigned, an attorney, caused the Illinois Power Agency's Verified Petition for Reopening on the Commission's Own Motion to be filed via e-Docket with the Chief Clerk of the Illinois Commerce Commission in the above-captioned matter.

March 3, 2021

/s/ Brian P. Granahan
Brian P. Granahan

CERTIFICATE OF SERVICE

I, Brian P. Granahan, an attorney, certify that a copy of the foregoing document was served upon the parties on the Illinois Commerce Commission's service list as reflected on e-Docket via electronic delivery on March 3, 2021.

/s/ Brian P. Granahan
Brian P. Granahan