**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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| Illinois Commerce Commission<br>On Its Own Motion | )<br>) | |
| | ) | Docket No. 17-0267 |
| Amendment of 83 Ill. Adm. Code 455 | ) | |

**REPLY OF**
**THE RETAIL ENERGY SUPPLY ASSOCIATION**
**TO BRIEFS ON EXCEPTIONS**

On July 19, 2017, the Administrative Law Judge ("ALJ") issued her Proposed Second Notice Order ("PSNO"), which attached the Proposed Second Notice Rules ("PSNR") in this proceeding, in which the Illinois Commerce Commission (the "Commission") is considering the adoption of permanent amendments to 83 Ill. Admin. Code Part 455, concerning Renewable Portfolio Standards ("RPS"). The Commission did so in order to incorporate the changes made to the Renewable Portfolio Standards ("RPS") provisions of the Public Utilities Act by the Future Energy Jobs Act ("FEJA"), Public Act 99-0906. The ALJ set the dates of July 28, 2017 for the filing of Briefs on Exceptions and August 4, 2017 for the filing of Replies to Briefs on Exceptions.

Briefs on Exceptions were filed by the Commission Staff, the Illinois Competitive Energy Association ("ICEA"), the Illinois Power Agency ("IPA"), Wind on the Wires, the Carbon Solutions Group, and the Environmental Law and Policy Center ("ELPC"). In

this Reply to Briefs on Exceptions, the Retail Energy Supply Association[1] ("RESA") will reply to the Briefs on Exceptions of ICEA, the IPA and the ELPC.

## RESPONSE TO ICEA

ICEA recommends that the Commission reconsider whether RECs procured under long-term contracts before December 31, 2016 should be eligible for a Retail Electric Supplier's ("RES") RPS requirements even if those RECs do not satisfy new Section 16-115D (a) (3.5) added by FEJA to the Public Utilities Act. (ICEA BOE, pp. 1-2) RESA agrees. ICEA offered an excellent example of why eligibility would be appropriate. A RES contracts on June 1, 2016, which is months before FEJA became law, to buy five years' worth of wind RECs. While those RECs would be compliant with the RES' RPS requirements for the compliance year ended May 31, 2017, they would not be for subsequent compliance years. RESA agrees with ICEA that it would be consumer unfriendly to require RESs to procure additional RECs on behalf of their customers when RECs were purchased in good faith long before FEJA was enacted. RESA notes that while some parties have assumed that such RECs while worthless to meet RPS requirements in Illinois after May 31, 2016, would still have value on the market, such assumptions were simply that—assumptions with no facts to back them up.

[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

**RESPONSE TO THE IPA**

Subsection 455.120 (b) (4) (B) of the PSNR would provide a limited "safe harbor" approach for RECs that are not listed by a recognized REC tracking system as an eligible supplier of RECs. While RESA supported a broader approach, this limited approach is necessary because there is currently no recognized REC tracking system that informs RESs that RECs were not purchased from a facility whose costs were being recovered through regulated rates on or after January 1, 2017. RESA appreciates the IPA's efforts to create such a tracking system; however until that tracking system exists, some safe harbor approach is necessary.

The IPA states that it has proposed some "minor changes" to Subsection 455.120 (b) (4) (B). (IPA BOE, p. 1) However, those proposed changes would basically take away any ability of a RES to provide suitable documentation that a REC meets the requirements of Section 455.120 (b) (4) and place the determination solely in the hands of the IPA and the Commission Staff. RESA recommends that the Commission not modify Subsection 455.120 (b) (4) (B) in the manner proposed by the IPA.

**RESPONSE TO ELPC**

In its Comments in this proceeding, ELPC offered its opinion that the Commission's Part 455 should include greater public disclosure requirements. However, the ALJ correctly rejected that opinion in the PSNO, stating that "ELPC has not provided sufficient information why market sensitive information should be publicly available". (PSNO, p. 23) The PSNO does not adopt ELPC's proposal for public disclosure.

In its Brief on Exceptions, ELPC states that public disclosure of RPS compliance information is important "because it allows public interest and watchdog organizations to monitor ARES' compliance with the RPS and file complaints with the Illinois Commerce Commission if necessary". (ELPC BOE, p. 2) However, ELPC's statement appears to be based on a misunderstanding of the roles of various entities in the regulatory process. It is the job of the Commission to determine compliance. Consequently, there is no need for RESs to make public documents which are inherently of a proprietary nature.

ELPC acknowledges that RESs are required to file a public version of reports that are filed on a confidential basis, but states that the Commission's rules do not require those public reports to be published in any way or otherwise made accessible to the public. ELPC is incorrect. A public report is just that—it is public. Public versions of RPS reports are available from the Chief Clerk's office the same way that any public document filed with the Commission is available.

**CONCLUSION**

For the reasons stated in this Reply to Brief on Exceptions, RESA respectfully requests that the Commission modify the Proposed Second Notice Rules consistent with RESA's recommendations.

Respectfully submitted,

*/s/ GERARD T. FOX*
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## NOTICE OF FILING

Please take note that on August 4, 2017, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Reply of the Retail Energy Supply Association to Briefs on Exceptions in this proceeding.

/*s/GERARD T. FOX*
Gerard T. Fox

## CERTIFICATE OF SERVICE

I, Gerard T. Fox, certify that I caused to be served copies of the foregoing Reply of the Retail Energy Supply Association to Briefs on Exceptions upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on August 4, 2017.

/*s/ GERARD T. FOX*
Gerard T. Fox