

**Reply Comments Concerning the**  
**2012 Electric Procurement Process**  
*pursuant to*  
**Section 16-111.5(o) of the**  
**Illinois Public Utilities Act**

*submitted to the*  
**Illinois Commerce Commission**

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## **Introduction**

Levitan & Associates, Inc. (LAI) appreciates this opportunity to submit these reply comments regarding the 2012 Rate Stability and Spring 2012 electric procurement events requested by the Illinois Commerce Commission (“Commission”) issued on May 17, 2012. Comments were submitted by five parties, including: Boston Pacific Company, Inc., the Procurement Monitor; Staff of the Illinois Commerce Commission (“Commission Staff”); NERA Economic Consulting, the Procurement Administrator for the 2012 Commonwealth Edison procurements; Exelon Generation Company, LLC; and, the People of the State of Illinois through the Office of the Illinois Attorney General (“Office of the Illinois AG”). LAI served as the Procurement Administrator on behalf of the Illinois Power Agency (“IPA”) for the 2012 Ameren Illinois Company (“AIC”) procurements. These comments are focused on the comments submitted by the Office of the Illinois AG regarding AIC’s energy, renewable energy credits (“RECs”) and capacity procurements.

*Procurement Process* – Prior to June 1, 2012, LAI conducted five separate procurement events on behalf of the IPA to obtain energy, capacity and RECs to serve AIC’s eligible retail customers. In accord with Public Act 97- 0616, which directed the IPA to conduct Rate Stability procurements by February 28, 2012, procurement events were conducted for energy and RECs. The Spring 2012 procurement events were conducted separately for energy, capacity and RECs consistent with the IPA’s 2012 Procurement Plan which was approved by the Commission on December 21, 2011.<sup>1</sup>

Announcements regarding the 2012 procurement events were sent to a diverse list of nearly 500 contacts at potential bidders and other interested parties. A total of 59 qualified bids were submitted to the five AIC procurement events from 35 different bidding entities. At least eight bidders participated in each event. The Commission released public notices summarizing the results of the procurement events.

The Rate Stability solicitations sought wholesale energy products and RECs for five separate product delivery periods, including four annual periods starting June 1, 2013 through May 31, 2017, and a seven-month period starting June 1, 2017 through December 31, 2017. 650 MW in 50 MW blocks were sought in each of the energy delivery periods. Four winning bidders were selected in the energy solicitation, yielding a total of 1,500 MW in 50 MW blocks. The RECs procurement event resulted in thirteen winning bidders being selected to provide the 2,053,837 RECs that were solicited.

The Spring 2012 solicitations included nine winning bidders for capacity, two winning bidders for wholesale energy and seven winning bidders for RECs. Due to the uncertainties regarding the structural changes to the capacity market that the Midwest Independent System Operator (“MISO”) has proposed to the Federal Energy Regulation Commission, in particular, the transition to an annual forward capacity construct from the current monthly structure, LAI solicited monthly Planning Resource Credits (“PRCs”) for

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<sup>1</sup> 11-0660 (Illinois Power Agency – Petition for Approval of Procurement Plan) Order, December 21, 2011.

the 2012-13 delivery period. However, LAI solicited annual Zonal Resource Credits (“ZRCs”) for the 2013-14 and 2014-15 delivery periods.<sup>2</sup> A total of 15,470 PRCs were solicited for the June 1, 2012 through May 31, 2013 delivery period with 15,120 PRCs purchased from the winning bidders. The PRCs procured for July 2012 were 350 less than solicited. For the June 1, 2013 through May 31, 2014 and the June 1, 2014 through May 31, 2015 delivery periods, 1,660 ZRCs and 1,110 ZRCs were solicited and procured, respectively. The Spring solicitation for wholesale energy procurements was limited to 700 MW of on-peak energy in specific months (June, July, August, September, and December) and 1,000 MW of off-peak energy in specific months (June, July, January, and February) for the June 1, 2012 through May 31, 2013 delivery period. No energy products were solicited for the 2013-14 and 2014-15 delivery periods since sufficient energy had been procured through previous procurement events.

*Benchmarks* – Section 16-111.5(e)(3) of the Public Utility Act (“PUA”) calls for the Procurement Administrator in conjunction with the Commission Staff, the IPA, and the Procurement Monitor to establish benchmarks for evaluating the final prices of the products to be procured by the IPA on behalf of AIC. Upon receipt of binding bids from Registered Bidders, the Procurement Administrator, as monitored by the Procurement Monitor, evaluated the bids in accordance with the requirements specified in Section 16-111.5(e) of the PUA. Bids were evaluated based on price to arrive at the lowest cost combination of bids that satisfy the Contract Quantities, subject to the market-based price benchmarks.

The benchmarks used for the AIC procurement were treated as confidential. As such they are known by the Procurement Administrator, the IPA, the Commission Staff, the Procurement Monitor, and the Commission. Prior to conducting any of the solicitations, the proposed benchmarks and the methodology for determining the benchmarks were submitted to the Commission for review and approval. The only information released to the potential bidders regarding the benchmarks states that in accord with Section 16-111.5(e) of the PUA, the bids will be evaluated based on price subject to market-based price benchmarks for each product solicited and that the benchmarks would be based on price data for similar products for the same procurement period and for the same market settlement point. Bidders were also informed that no bids priced above the corresponding market-based benchmark would be accepted as winning bids, that the benchmarks are confidential, and that such benchmarks were subject to review and approval by the Commission prior to bidding.

### **Reply to the Comments of the Office of the Illinois AG**

The Office of the Illinois AG states that “The results of the 2012-2013 procurement of electricity and renewable energy resources appear to be consistent with market prices.”<sup>3</sup> The Office of the Illinois AG also states that “The Ameren bids are also consistent, and

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<sup>2</sup> One PRC is the capacity equivalent of one MW-month and one ZRC is the capacity equivalent of one MW-year.

<sup>3</sup> The renewable resource procurements purchased renewable energy credits (“RECs”).

slightly below the wholesale NYMEX process for 2012”. Further, we note that the Procurement Monitor in comments submitted to the Commission’s May 17th request stated “...in the context of the Act’s requirement to assess bidder behavior, we found no evidence of collusive or otherwise anti-competitive behavior.” The Procurement Monitor goes on to say “...in the context of the Act’s requirement to assess whether the RFPs were run in compliance with the rules, we concluded that these RFPs were run by the procurement administrators in compliance with all Commission-approved rules.”

LAI’s more specific comments to address the questions and concerns raised by the Office of the Illinois AG follow:

1. *Reply to comments regarding the limited number of successful suppliers in the 2012 AIC Spring energy procurement, whether the benchmarks used were appropriately set and properly protected from disclosure prior to the auction, and whether changes to the procurement process are necessary or appropriate.* In a sealed-bid, one-time only sell-as-bid, auction such as is used in the AIC procurements, when coupled with the statutory requirements to take the lowest priced bids that pass the benchmark, the number of successful bidders is not indicative of the competitive nature of the solicitation. Rather, the more appropriate indication of competitiveness is the number of bidders and bids that are submitted. For this solicitation, the number of bidders participating was sufficient to provide a competitive bidding process. Further, the sealed bid process used by LAI in the AIC solicitations limits the information available to bidders. Under this process, in addition to having limited information, bidders can only submit bids during the two hour bidding window. Thus, the limited information and flexibility of the sealed bid process acts to prevent bidders from obtaining a competitive advantage. It should be noted that the two winning bidders for the Spring energy solicitation were different from the four winning bidders in the Rate Stability energy solicitation; hence, a larger number of bidders were selected to supply competitive energy products for the AIC 2012 procurements.

The energy benchmarks were developed in conjunction with the Commission Staff, the IPA, and the Procurement Monitor, and then subsequently reviewed and approved by the Commission. These benchmarks were treated as confidential with access limited to the appropriate personnel with each of the aforementioned entities. There is no evidence that any benchmarks were disclosed to any bidders or the public for the 2012 AIC procurements.

2. *Reply to comments regarding the drop in the number of successful REC suppliers, the high concentration of winning bidders by REC category and whether changes in the procurement process are necessary or appropriate.* The decrease in the number of successful bidders for the AIC Spring RECs solicitation is explainable. First, a relatively small number of RECs was solicited in this procurement due to the RECs that were previously acquired in the Rate Stability RECs procurement and the Long-term Renewable Energy Procurement held in December 2010. Second, the number of bidders submitting bids into the 2012 RECs solicitations

remained robust. As stated earlier, the sealed bid auction process that is used for the AIC procurements coupled with the requirement to take the lowest priced bids that pass the benchmark means that the number of winning bidders is not as important as the number of participant bidders in the solicitation. Third, for certain REC technology sources, the benchmarks limited the number of qualified bids. By statute, the Procurement Administrator can only select the lowest priced bids that pass the benchmark screening. For these reasons, LAI finds that the decrease in the number of successful bidders is reasonable.

3. *Reply to comments regarding the absence of sufficient capacity bids in July 2012.* In their comments, the Office of the Illinois AG asked the Procurement Administrator to address the absence of sufficient capacity bids for July in light of the low capacity charges in the MISO area in relation to the average procured price, and whether changes in the procurement process are necessary or appropriate. The Office of the Illinois AG also notes that at about the same time that the IPA capacity procurement was held, the MISO Voluntary Capacity Auction (“VCA”) produced a clearing price that is significantly lower than the prices bid in to the AIC capacity auction. The Office of the Illinois AG further notes that it is unclear why bidders failed to participate sufficiently in the AIC capacity auction where capacity prices were higher than the VCA. First, it is important to note that the AIC capacity auction and the VCA were not held concurrently. Because the VCA auction is an auction of last resort, the AIC auction is held at least two months ahead of the VCA. Scheduling the AIC auction ahead of the VCA provides AIC with the opportunity to participate in the VCA to meet their planning resource requirements. Therefore, bidders would not have known the VCA prices as they were bidding into the AIC capacity auction.

In our opinion, the results for the July 2012 AIC capacity auction are an exception, not the norm. This is the first time since the 2009 procurement that the number of capacity bids for July has fallen short of the procurement requirement. There are a number of likely reasons that explain the gap. First, warmer-than-normal winter and spring temperatures in MISO resulted in bidders’ anticipation of hotter-than-normal conditions in the summer months, in particular, July, usually, the peak month. In response to the expectation for a hotter-than-normal July, bidders may have decided to hold onto their July PRCs either to meet existing capacity contracts or to capture higher values for the PRCs in the VCA auction for July. Second, price volatility and low clearing volumes have characterized the VCA over its history. Bidders understand the volatile nature of the VCA and may have anticipated higher prices in the VCA for July. For example in July 2009 the auction clearing price in the VCA sky-rocketed to \$10,015/MW-month. Given the size of the AIC capacity requirements relative to the VCA volumes, if AIC had decided to obtain all of their 2012 capacity requirements through the VCA, a similar price spike may have occurred. However, as the July 2012 VCA results show, this did not happen: the clearing price was \$50/MW-month, reflecting the relatively low clearing volumes absent large purchases by AIC. Third, unlike prior procurements the 2012 AIC capacity procurement took place after MISO had submitted their resource adequacy

requirements enhancements at FERC. Again, overarching uncertainties surrounding FERC's treatment of the resource adequacy construct may have motivated certain bidders to withhold a portion of their capacity for July.

In summary, while LAI believes that potential improvements and enhancements to the procurement processes should be considered, for the reasons discussed in these reply comments, the questions and concerns raised by the Office of the Illinois AG do not specifically warrant changes to the current procurement processes at this time.