

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY)
)
Petition of Commonwealth Edison Company for)
Approval Pursuant to Section 7-102 of the Public)
Utilities Act of the Entry Into Certain Contracts) Docket No. 06-0270
Relating to Wind Generation and Approval Under)
Section 9-201 of a Tariff Concerning the Governor's)
Sustainable Energy Plan and the Illinois Commerce)
Commission's Resolution in Docket No. 05-0437)

DIRECT TESTIMONY OF

MICHAEL SKELLY

ON BEHALF OF HORIZON WIND ENERGY LLC

July 7, 2006

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 **A.** My name is Michael Skelly, and my business address is 808 Travis, Suite 700, Houston,
4 Texas, 77002.

5 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

6 **A.** I am employed by Horizon Wind Energy LLC (“Horizon”), and I hold the position of
7 Chief Development Officer.

8 **Q. PLEASE DESCRIBE YOUR EDUCATION AND EMPLOYMENT EXPERIENCE.**

9 **A.** I received a B.A. in economics from the University of Notre Dame in 1984 and an
10 M.B.A. from Harvard Business School in 1991. Prior to joining Horizon, I was Director
11 of Business Development for Energia Global (EGI), an IPP focused on independent
12 power projects in Central America. I was also a founding partner and former general
13 manager of the Rain Forest Aerial Tram in Costa Rica.

14 **Q. WHAT ARE YOUR RESPONSIBILITIES AS CHIEF DEVELOPMENT
15 OFFICER FOR HORIZON?**

16 **A.** I lead Horizon’s development activities across the country. I have been intimately
17 involved in the origination and development of all projects Horizon has built, and am
18 responsible for bringing future projects to fruition.

19 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE A STATE REGULATORY
20 COMMISSION?**

21 **A.** Yes, in Oklahoma. I have also testified before numerous state legislative committees.

22 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

23 **A.** I will discuss the important elements that should be incorporated in the RFO solicitation
24 to ensure that projects will be commercially operational by the end of 2007.

25 **II. DESCRIPTION OF HORIZON WIND ENERGY LLC**

26 **Q. PLEASE BRIEFLY DESCRIBE HORIZON.**

27 **A.** Horizon Wind Energy, formerly Zilkha Renewable Energy, develops, constructs, owns,
28 and operates wind farms throughout the United States. With wind farms operating in New
29 York, Iowa, Pennsylvania, and Oklahoma, and other projects under construction in
30 Illinois and Washington, Horizon is developing a portfolio of projects in a dozen states.

31 **Q. IS HORIZON CURRENTLY DEVELOPING WIND PROJECTS IN ILLINOIS?**

32 **A.** Yes. Horizon and its affiliates are currently developing the Twin Groves Wind Farm
33 located in McLean County. The Twin Groves Wind Farm will offer as much as 400
34 megawatts of affordable, pollution-free wind energy, enough to meet the annual energy
35 needs of about 120,000 homes. The first 200 MW of Twin Groves is under construction.
36 Upon completion, the Twin Groves Wind Farm will be in a position to potentially
37 provide wind-generated energy to ComEd. Horizon is also developing several other wind
38 farms in Illinois totaling 850 megawatts.

39 **Q. DO YOU HAVE ANY PROJECTS THAT WILL BE COMMERCIALY**
40 **OPERATIONAL BY DECEMBER 31, 2007?**

41 **A.** Yes. The first 198 MW of the Twin Groves Wind Farm is currently under construction
42 and is expected to be commercially operational during the first quarter of 2007. Horizon
43 will soon be deciding where to install the turbines it has ordered for 2007, and if we
44 execute a power purchase agreement with an Illinois utility soon, we may wish to install
45 the second 198 MW at Twin Groves for a total of 400 MW by the end of 2007.

46 **III. COMED'S PROPOSED REQUEST FOR OFFERS FROM WIND GENERATORS**

47 **Q. WHAT IS HORIZON'S OPINION REGARDING THE OVERALL STRUCTURE**
48 **OF THE PROPOSED REQUEST FOR OFFERS (RFO) FOR WIND ENERGY**
49 **AND RECS?**

50 **A.** Horizon is impressed with the proposed Request for Offers for wind energy and RECs
51 that was submitted by ComEd as Exhibit 1.2 in the initial petition filing of this docket. It
52 contains several important elements that confirm ComEd’s intentions to purchase wind-
53 generated electricity and RECs in accordance with the Illinois Sustainable Energy Plan
54 by January 1, 2008. The RFO includes several measures that protect against the risk of
55 contract failure. However, these measures need to be strengthened in order to be
56 effective, and additional measure should be included.

57 **Q. WHAT IS CONTRACT FAILURE?**

58 **A.** When utilities issue requests for offers for wind generation, they often receive a
59 tremendous number of responses from a variety of developers and projects. While some
60 of these developers and projects are more capable and advanced than others, final
61 selections are often based solely or overwhelmingly on price. It is not uncommon for
62 these low-priced projects to be unrealistic and not be built on time or at all. This
63 phenomenon where contracted wind projects fail to meet their commercial operation
64 dates is called contract failure.

65 **Q. HOW PREVALENT IS THE PROBLEM OF CONTRACT FAILURE?**

66 **A.** A recent study prepared by Kema, Inc. for the California Energy Commission (CEC)
67 analyzed the problem of contract failure (“Building a Margin of Safety Into Renewable
68 Energy Procurements: A Review of Experience with Contract Failure” – attached hereto
69 as Exhibit 1.1). This study found that overall contract failure rates for North American
70 renewable energy projects have been on the order of 20% - 30%. Exhibit 1.1, p. 42. For
71 any individual RFO, contract failure rates can range from 0% to 100%. Horizon has
72 participated in some very successful RFOs in the past several years, but has also seen
73 some abysmal experiences. For example, PacifiCorp issued an RFP for 1100 MW of

74 renewables in February 2004. The RFP called for 100 MW to be online by April 2005,
75 and 200 MW online annually from April 2006 – 2010. PacifiCorp targeted executing
76 definitive agreements by June 2004. The RFP, which did not contain adequate provisions
77 to protect against contract failure risk, received a massive response of more than 50 bids
78 for approximately 6000 MW. PacifiCorp did not execute any agreements until March
79 2005, and to date only 64.5 MW are operating and an additional 42 MW are under
80 contract for the end of 2007.

81 In a similar case in 2004, Xcel Energy issued an RFP for 500 MW of renewables in
82 Colorado to be online by the end of 2005. In January 2005, Xcel announced that it had
83 begun negotiations for 400 MW of wind power. By the end of 2005, however, only 60
84 MW were online.

85 If ComEd wants to avoid these contract failure experiences, the RFO should contain tight
86 provisions that ensure the selection of serious bidders and realistic projects.

87 **Q. WHAT ARE SOME OF THE CAUSES OF CONTRACT FAILURE?**

88 **A.** According to the CEC report, there are a variety of potential reasons for wind project
89 construction delays. *See* Exhibit 1.1, p. 7. One category of issues is the failure to achieve
90 certain elements of project development, including permitting, transmission
91 interconnection, land control, and wind resource assessment. It could also result from a
92 failure to obtain financing or lack of creditworthiness of either party. Historically,
93 project delays that lead to missing production tax credit (PTC) deadlines have been a
94 problem, and this is a pressing issue for the proposed RFO given the current PTC
95 expiration date of December 31, 2007. Recently, capital cost increases (common with

96 unrealistically low-priced bids) and turbine availability have been the culprits of many
97 contract failures.

98 **Q. WHAT MEASURES CAN BE TAKEN TO AVOID CONTRACT FAILURE?**

99 **A.** The primary methods used to avoid contract failure include establishing threshold bidder
100 and project requirements, requiring bid deposits and securities, and creating waiting lists.
101 *See Exhibit 1.1, p. 8.*

102 **Threshold Requirements**

103 RFOs should contain certain threshold requirements that bidders and projects must meet
104 in order to make it to the pricing evaluation stage of the RFO process. These
105 requirements should include written evidence of secured permits, interconnection, land,
106 turbines, financing, and wind resource verification. If a bidder is not able to demonstrate
107 that these conditions have been met, the bid should be dismissed from further
108 consideration.

109 **Bid Deposits and Security**

110 Bid deposits are often employed to avoid shot-in-the-dark bids. These deposits require
111 bidders to post cash or a letter of credit that is returned if the bidder is not selected or
112 when the selected project provides its security. The security is typically provided shortly
113 after contracting and is returned once the project reaches its commercial operation date.
114 Deposits and securities are typically one of the best ways of ensuring serious bidders in
115 the RFO process. Some object that requiring large deposits and securities may deter or
116 exclude some bidders, but I believe that if these companies are truly capable of investing
117 hundreds of millions of dollars in projects that will be online in 2007, they should have
118 the wherewithal to provide a bid deposit to back their bid proposals.

119 **Waiting Lists**

120 In the event that these methods are not employed or do not succeed in avoiding contract
121 failure, it is wise for utilities to create waiting lists of projects beyond the selected
122 bidders. The wait-listed projects may be able to help utilities fulfill their procurement
123 obligations if the selected projects do not pan out.

124 **Q. WHICH OF THESE MEASURES DOES THE PROPOSED RFO SOLICITATION**
125 **CONTAIN?**

126 **A.** The proposed RFO contains bidder and project eligibility requirements, security (the
127 “Development Fee”), and credit support requirements. Unfortunately, the threshold
128 requirements are not stringent enough to be effective. Rather than requiring that
129 permitting, interconnection, land acquisition, turbine contracting, financing, and wind
130 resource assessment work be complete, the RFO requires that these items are or will be
131 completed. This qualifier is significant enough to allow many unrealistic bids to get
132 through the bid evaluation process, wherein nonviable projects will receive the same
133 consideration as viable projects. This fatal flaw, coupled with the fact that no bid deposit
134 is required, effectively makes the RFO open to all bidders and greatly increases the risk
135 that ComEd will not achieve its goal of contracting for 250 MW by January 1, 2008.

136 **Q. WHAT CHANGES TO THE PROPOSED RFO DO YOU RECOMMEND?**

137 **A.** We strongly recommend adding a bid deposit, strengthening the threshold requirements,
138 and creating a wait list of projects. In no event should the requirements already present be
139 weakened or eliminated. If ComEd wishes to make certain that wind projects come on
140 line by the end of 2007, the selection criteria must be dramatically tightened.

141 **Q. DO YOU HAVE ANY CONCERNS ABOUT THE PROPOSED PURCHASE**
142 **AGREEMENT FOR WIND ENERGY AND RECS?**

143 **A.** Our primary concern with the proposed purchase agreement is the “regulatory out”
144 included in section 5.1 (b). This provision allows ComEd to terminate the agreement if
145 “...any Requirement of Law or any action by the RTO should have the effect of
146 suspending, limiting or denying ComEd’s ability to recover fully such costs....” These
147 regulatory risks are an inappropriate burden for a wind power developer to bear and
148 would prohibit most developers from signing contracts. This provision should be
149 removed from the proposed purchase agreement.

150 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

151 **A.** Yes.