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ILLINOIS COMMERCE COMMISSION

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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ILLINOIS POWER AGENCY)
)
Petition for Approval of Initial)
Procurement Plan)

CHIEF CLERK'S OFFICE
Docket No. 09-0373

**AMENDED OBJECTIONS OF
EXELON GENERATION COMPANY, LLC
TO THE PROCUREMENT PLAN
OF THE ILLINOIS POWER AGENCY**

Exelon Generation Company, LLC ("ExGen"), submits its amended objections, pursuant to Section 16-111.5(d)(3) of the Illinois Public Utilities Act ("PUA") (220 ILCS 5/16-111.5(d)(3)), to the Procurement Plan ("Plan") filed with the Illinois Commerce Commission ("Commission" or "ICC") by the Illinois Power Agency ("IPA"). This filing is an amendment to the "Objections of Exelon Generation Company, LLC to the Procurement Plan of the Illinois Power Agency" filed by ExGen on October 5, 2009.¹ As ExGen presently understands the Plan, there is no Illinois locational requirement for the generation sources that may bid to supply energy and related products pursuant to the Plan. Accordingly, ExGen hereby amends its pleading by removing Section II of its original objections.

ExGen strongly objects to the plan's irrational subsidies for certain types of energy over others. By limiting competition and available energy sources, these subsidies and preferences come at the expense of consumers. ExGen believes that revising the Plan to eliminate these barriers to competition will permit it to compete fairly and result in lower retail prices.

¹ Attached for your reference is a redline version.

I. The Plan Offers No Rational Basis for Preferential Treatment of “Renewable Resources”

The Plan proposes to bias the energy procurement of Illinois public utilities in favor of suppliers of “renewable” energy, for reasons that do not stand up to scrutiny.

The first reason offered is that “renewable” energy offers a hedge against potential imposition of a federal carbon cap-and-trade regime:

To mitigate this risk to consumers, the IPA proposes to include energy from renewable energy resource providers into the portfolio as a hedge against the higher market costs expected as a result of greenhouse gas regulatory structures. Renewable energy generation assets typically generate power at costs higher than those available in the market today, and are generally developed only when supported by longer term power purchase agreements. The IPA recommends soliciting proposals from renewable energy providers under longer term contracts with the Utilities.

Plan at 20. *See also* Plan at 51. This argument fails on several levels:

First, in so far as federal carbon legislation is passed, it will bind the carbon emitter (i.e., the generator) rather than the power consumer in Illinois. Any fixed-price power purchase agreement between an Illinois utility and a carbon-emitting power supplier would leave the risk of increased costs due to a carbon cap exclusively with the power supplier. As far as the carbon legislation is concerned, there is no difference between a “renewable” and a conventional power supplier. Simply stated, the IPA should continue its practice of placing environmental risks associated with electric generation on suppliers.

Second, to the extent that “renewables” are capable of providing a lower long term price because of their method of generation or federal and state subsidies, then they will win a competitive procurement. If, on the other hand, renewables are more expensive and cannot prevail on a “best price” basis, even taking into account all federal and state incentives, then the

selection of the renewables under the Plan by definition will result in a worse deal for Illinois consumers.

Finally, nuclear power, which generates almost no carbon emissions, should be considered on an equal basis to “renewable” resources; the Plan offers no reason it is not.

The Plan also offers a second argument in favor of procurement of renewable energy now:

Further, substantial federal and state assistance in the form of various subsidies are available to offset a portion of the premiums associated with such providers. The IPA recommends taking advantage of the current financial climate to issue solicitations for longer term renewable energy supply contracts.

Plan at 20. However, the Plan offers no evidence whatsoever that federal and state assistance to renewable energy is likely to decline in future years. In fact, it seems unlikely to decline until such time, if ever, that renewable energy is price-competitive with conventional energy, even without these subsidies. Under these circumstances, there is no need to “lock-in” any putative temporary price advantage of renewable energy through long-term contracts. Finally, as noted, the bottom line is price. If federal and state subsidized renewables remain so expensive that they cannot win a “best price” procurement, then they should not be selected and the premise that they provide any consumer price “hedge” is flawed.

II. The Plan Distorts Energy Markets at the Expense of Consumers.

The common factor of the Plan’s distortions of competition described here is that they victimize consumers. An optimal energy portfolio for Illinois utilities (and hence Illinois consumers) would be based on objective, economic factors, such as price, contract length, and risk of non-performance. Adding extraneous concerns, such as the process by which the power is produced to the mix of considerations is useless.

If the preferred power suppliers would have prevailed on the basis of objective, economic criteria, adding additional extraneous considerations accomplishes nothing—utilities and consumers would have bought power from the same sources based on the economic factors and consideration of the additional criteria only adds to the cost and delay of the decision process.

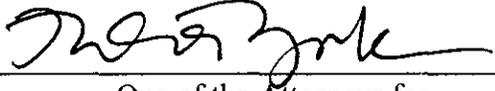
If the preferred power suppliers would not have prevailed on the basis of objective, economic criteria, but did so on the basis of the extraneous criteria, consumers are positively harmed. They end up being provided with more expensive and more risky power than they otherwise would have.

III. Conclusion

For the above stated reasons, ExGen respectfully requests that the Commission modify the Plan in response to the comments contained herein.

Dated this 9th day of October, 2009.

Respectfully submitted,
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Attachment

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS POWER AGENCY)	
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Petition for Approval of Initial Procurement Plan)	Docket No. 09-0373
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**AMENDED OBJECTIONS OF
EXELON GENERATION COMPANY, LLC
TO THE PROCUREMENT PLAN
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Exelon Generation Company, LLC (“ExGen”), submits its amended objections, pursuant to Section 16-111.5(d)(3) of the Illinois Public Utilities Act (“PUA”) (220 ILCS 5/16-111.5(d)(3)), to the Procurement Plan (“Plan”) filed with the Illinois Commerce Commission (“Commission” or “ICC”) by the Illinois Power Agency (“IPA”). This filing is an amendment to the “Objections of Exelon Generation Company, LLC to the Procurement Plan of the Illinois Power Agency” filed by ExGen on October 5, 2009.¹ As ExGen presently understands the Plan, there is no Illinois locational requirement for the generation sources that may bid to supply energy and related products pursuant to the Plan. Accordingly, ExGen hereby amends its pleading by removing Section II of its original objections.

ExGen strongly objects to the plan’s irrational subsidies for certain types of energy ~~and supply locations~~ over others. By limiting competition and available energy sources, these subsidies and preferences come at the expense of consumers. ~~Beyond these economic costs, certain preferences in the plan raise serious constitutional concerns.~~ ExGen believes that revising the Plan to eliminate these barriers to competition will permit it to compete fairly;

¹ Attached for your reference is a redline version.

~~resulting and result~~ in lower retail prices, ~~and reduced risk of cost and delay resulting from legal challenge to the Plan.~~

I. The Plan Offers No Rational Basis for Preferential Treatment of “Renewable Resources”

The Plan proposes to bias the energy procurement of Illinois public utilities in favor of suppliers of “renewable” energy, for reasons that do not stand up to scrutiny.

The first reason offered is that “renewable” energy offers a hedge against potential imposition of a federal carbon cap-and-trade regime:

To mitigate this risk to consumers, the IPA proposes to include energy from renewable energy resource providers into the portfolio as a hedge against the higher market costs expected as a result of greenhouse gas regulatory structures. Renewable energy generation assets typically generate power at costs higher than those available in the market today, and are generally developed only when supported by longer term power purchase agreements. The IPA recommends soliciting proposals from renewable energy providers under longer term contracts with the Utilities.

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~~II. The Plan Raises Serious Practical and Constitutional Concerns by Discriminating Against Out-of-State Energy Generators.~~

~~ExGen also notes certain language contained in Section 1-75(e)(3) of the PUA giving preference to renewable energy resources in Illinois and adjoining states over those elsewhere:~~

~~Through June 1, 2011, renewable energy resources shall be counted for the purpose of meeting the renewable energy standards set forth in paragraph (1) of this subsection (c) only if they are generated from facilities located in the State;~~

~~provided that cost-effective renewable energy resources are available from those facilities. If those cost-effective resources are not available in Illinois, they shall be procured in states that adjoin Illinois and may be counted towards compliance. If those cost-effective resources are not available in Illinois or in states that adjoin Illinois, they shall be purchased elsewhere and shall be counted towards compliance.~~

~~After June 1, 2011, cost-effective renewable energy resources located in Illinois and in states that adjoin Illinois may be counted towards compliance with the standards set forth in paragraph (1) of this subsection (c). If those cost-effective resources are not available in Illinois or in states that adjoin Illinois, they shall be purchased elsewhere and shall be counted towards compliance.~~

20 Ill. Comp. Stat. 3855/1-75(c)(3) (emphasis added).

~~This language raises serious practical and constitutional concerns. Although not an absolute bar to import of power from other states, it distorts the interstate energy market in favor of in-state (and state-adjacent) producers who are given the first opportunity to provide the specified power amounts.~~

~~This preference is not made acceptable by the inclusion of a safety valve allowing out-of-state competition when “cost-effective resources are not available” in-state or state-adjacent. When the preferred suppliers have the best prices and terms, the above discrimination is unnecessary as, even without it, the preferred suppliers would have prevailed in an open competition. When the preferred suppliers cannot offer “cost-effective renewable energy” and the non-preferred suppliers are allowed to compete freely, the discriminatory language also is without effect. The only circumstances in which this discrimination proves effective is if (a) preferred suppliers offer terms which are deemed “cost-effective” and (b) non-preferred suppliers would have offered better terms. In other words, the sole effect of this preference is to increase consumer’s power prices above what they would have been to profit certain preferred suppliers.~~

~~Beyond this practical concern, the preference also runs afoul of the U.S. Constitution's commerce clause. See, e.g., *Wyoming v. Oklahoma*, 502 U.S. 437, 458 (1992) (invalidating state preference for in-state energy resource as incompatible with dormant commerce clause, notwithstanding the savings clause of the Federal Power Act); *New England Power Co. v. New Hampshire*, 455 U.S. 331 (1982) (reversing, on dormant commerce clause grounds, state commission bar to export of inexpensive energy to out-of-state consumers); *Middle S. Energy v. Ark. Pub. Serv. Comm'n*, 772 F.2d 404 (8th Cir. 1985) (upholding, on dormant commerce clause grounds, injunction against state commission attempt to bar import of uneconomical energy from out-of-state source). ExGen reserves its right to raise constitutional and related challenges to these provisions in an appropriate forum.~~

III. The Plan Distorts Energy Markets at the Expense of Consumers.

The common factor of the Plan's distortions of competition described here is that they victimize consumers. An optimal energy portfolio for Illinois utilities (and hence Illinois consumers) would be based on objective, economic factors, such as price, contract length, and risk of non-performance. Adding extraneous concerns, such as the process by which the power is produced or where it is produced, to the mix of considerations is useless.

If the preferred power suppliers would have prevailed on the basis of objective, economic criteria, adding additional extraneous considerations accomplishes nothing—utilities and consumers would have bought power from the same sources based on the economic factors and consideration of the additional criteria only adds to the cost and delay of the decision process.

If the preferred power suppliers would not have prevailed on the basis of objective, economic criteria, but did so on the basis of the extraneous criteria, consumers are positively

harm. They end up being provided with more expensive and more risky power than they otherwise would have.

III. Conclusion

For the above stated reasons, ExGen respectfully requests that the Commission modify the Plan in response to the comments contained herein.

Dated this 5th day of October, 2009.

Respectfully submitted,
EXELON GENERATION COMPANY, LLC

By: _____
One of the Attorneys for
Exelon Generation Company, LLC

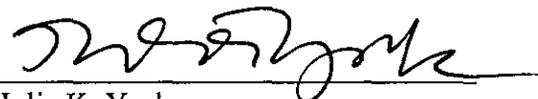
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VERIFICATION

I, Julia K. York, an attorney for Exelon Generation Company, LLC, being sworn on oath, hereby state that the facts stated in the forgoing Amended Objections of Exelon Generation Company, LLC to the Procurement Plan of the Illinois Power Agency are true and accurate to the best of my knowledge, information, and belief.

FURTHER AFFIANT SAYETH NOT.



Julia K. York
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SUBSCRIBED AND SWORN to before me
this 9th day of October, 2009.



Notary Public

CAROL A. FRIEND
A Notary Public of District of Columbia
My Commission Expires 2/28/14

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS POWER AGENCY)	
)	
Petition for Approval of Initial Procurement Plan)	Docket No. 09-0373
)	

NOTICE OF FILING

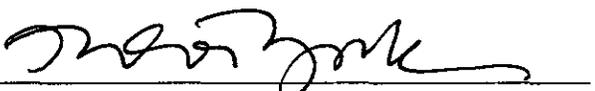
To: All Persons on the Attached Service List

Please take notice that on October 9, 2009, the undersigned has caused to be filed with the Clerk of the Illinois Commerce Commission, 527 E. Capitol Avenue, Springfield, Illinois 62701, Exelon Generation Company, LLC's Objections to the Procurement Plan of the Illinois Power Agency, copies of which are hereby served upon you.

Dated: October 9, 2009

Respectfully submitted,

EXELON GENERATION COMPANY, LLC

By: 

One of the Attorneys for
Exelon Generation Company, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th the day of October, 2009, copies of the above Notice, together with copies of the documents referred to therein, have been served upon all parties on the attached service list by first-class mail, postage pre-paid and by electronic mail.



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