STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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

VERIFIED RESPONSE OF THE ILLINOIS POWER AGENCY TO OBJECTIONS TO ITS INITIAL POWER PROCUREMENT PLAN

The Illinois Power Agency ("IPA") files this response to the objections to its Initial Power Procurement Plan submitted by the Staff of the Illinois Commerce Commission ("Staff"), Commonwealth Edison Company ("ComEd"), AmerenCILCO, AmerenCIPS, and AmerenIP (together referred to as "Ameren"), Constellation Energy Commodities Groups, Inc. and Constellation NewEnergy, Inc. (collectively, "Constellation"), and Exelon Generation Company, LLC ("ExGen").

On September 30, 2009, the IPA submitted to the Illinois Commerce Commission ("Commission") its Petition seeking approval of the IPA's Power Procurement Plan for the period June 2010 through May 2015 ("Procurement Plan" or "Plan"). This Plan was submitted in accordance with Section 16-111.5(d)(2) of the Illinois Public Utilities Act ("PUA"), 220 ILCS 5/16-111.5(d)(2). Staff, ComEd, Ameren, and Constellation filed Objections on October 5, 2009, with Staff filing an errata to its Objections on October 8, 2009. ExGen filed Objections on October 6, 2009, and subsequently served amended Objections on October 9, 2009. Pursuant to the Administrative Law Judge's October 7, 2009 Procedural Ruling, the IPA responds to issues raised by these parties. The IPA notes that parties seldom provided specific alternative wording, or redlines, modifying the Plan. In future proceedings, the Commission should direct the parties to file specific alternative language that would, if adopted by the Commission, implement their suggestions. In some cases, the parties commented generally on the Plan, but did not recommend that the Commission modify the Plan. In those instances, the IPA may respond generally.

I. Response to Commonwealth Edison

A. The Plan's proposal to solicit bids for Demand Response (Responding to ComEd Objections at 3-6.)

ComEd expressed concern about the Plan's demand response measures stating that it believes that PJM is already performing the "critical function of procuring demand response resources in accordance with the requirements of the PUA." ComEd Objections at 1. ComEd does not believe that the Plan's demand response procurement is consistent with the PUA and doubts the IPA's proposed process will result in lowering customer costs. ComEd recommends that the Commission direct it to continue its current practice of buying capacity from PJM markets and reject the IPA proposal for a separate DR capacity procurement. ComEd Objections at 6.

While the IPA agrees that the PJM procures demand response resources in accordance with the PUA, it disagrees that the Plan's proposal to procure additional or different demand response resources is inconsistent with the PUA. Section 16-111.5(b)(3)(ii) of the PUA requires the Plan to include a mix of demand response products where the cost of the demand response is lower than procuring comparable capacity products. 220 ILCS 5/16-111.5(b)(3)(ii). However, these demand response products are, *inter alia,* to be procured *from* eligible retail customers. *Id.* PJM's demand response program relies on curtailment service providers ("CSPs"), who act as agents for the customers in participating in demand response.[1] It is not clear that the demand response measures made available through PJM's demand response program would be acquired from or on behalf of eligible retail customers participating in the Plan. In addition, PJM demand response programs do not represent the entire universe of demand response or capacity options. Eligible retail customers purchasing energy through the Plan may benefit from more stable pricing, or at least alternative demand response options, outside of the PJM process.

With respect to ComEd's argument that the IPA-proposed demand response procurement would likely lead to higher costs for customers (ComEd Objections at 5), the Plan proposes that demand response measures be acquired only where the costs of such demand response is less than the cost of traditional capacity. Plan at 9.

The IPA recommends that no modifications be made to the demand response procurement proposal.

B. Long-term Renewable Resources (Responding to ComEd Objections at 6-9.)

While ComEd believes that long-term contracts for renewable resources should be explored by the parties, it notes several issues that must be addressed before they are included in the portfolio. ComEd Objections at 6. ComEd also suggests that these issues be the subject of workshops.

First, ComEd takes issue with the legality of the IPA's proposal for long-term renewables. ComEd notes that the Plan indicates that it intends for ComEd to target approximately 3.5% of Eligible Retail Load or 1,400,000 MWH annually, but ComEd contends that the IPA does not indicate how this would be limited by the annual cost caps in the PUA over the term of the proposed contracts. In addition, ComEd seeks clarity as to whether the IPA is

[1] *See e.g. http://www.pjm.com/markets-and-operations/demand-response.aspx.*

proposing that the statutory cost caps would even apply to these resources. ComEd Objections at 7.

Second, ComEd challenges the Plan's legality on the long-term renewable resources proposal. It states that "while the PUA does permit the procurement of energy pursuant to long-term contracts, such resources must be 'standard wholesale products' and such contracts must be 'standard contract forms'." ComEd Objections at 7. ComEd contends this provision standardizes the bids to avoid making assumptions for comparison purposes. ComEd recommends that "any such procurement be for standard wholesale products, be open to all market participants to ensure the lowest cost to customers and require the use of the same standardized contract for all suppliers. *Id.*

Third, ComEd believes that the Plan lacks analysis of the costs or risks associated with long-term contracts. ComEd suggests that the Plan does not address "important terms and conditions that will impact risks associated with long-term contacts and contracts intended to support new generation." ComEd Objections at 9.

The IPA's proposal for long-term PPAs was the subject of objections by several other parties, including the Staff and Ameren. The IPA addresses the issue raised by ComEd and the other parties as follows.

1. The IPA Act does not prohibit long-term PPAs.

The Illinois Power Agency has broad authority to meet the electricity procurement needs of the eligible retail customers and to ensure "adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability . . . . 20 ILCS 3855/1-5(A). The Illinois Power Agency Act ("IPA Act") further requires that the Plan include provisions to acquire cost-effective energy resources for a minimum percentage of each utility's total supply. 20 ILCS 3855/1-75(c)(1). These renewable energy resources, purchased to satisfy the IPA Act's renewable portfolio standard ("RPS") are subject to a cap on the price to be paid for renewable energy. 20 ILCS 3855/1-75(c)(2). However, neither the IPA Act, nor the PUA Act limit the acquisition of renewable energy to only the amounts required to satisfy the RPS, which are actually minimum volume goals. Moreover, the cost caps that apply to the purchase of renewable energy apply only to the "renewable" energy acquired to satisfy the RPS. There is no provision in the IPA Act or the PUA that would preclude the acquisition of energy, derived from renewable resources, outside of the minimums required to meet the RPS.

2. The acquisition of energy through long-term PPAs is consistent with the policy objectives of the IPA Act.

To further the statutory requirement that the IPA develop "adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time," while also "taking into account any benefits of price stability", the Plan proposes to solicit bids from qualified renewable energy providers for longer-term renewable energy. Plan at 52. It is intended that these long-term power purchase agreements ("PPAs") would satisfy eligible retail customers' energy needs outside of the RPS. The IPA believes that long-term PPAs can provide eligible retail customers with a hedge against potentially high-cost, or certainly unstable, carbon-based energy should the federal government impose restrictions or additional taxes on carbon-based energy. Competitively sourced long term contracts may stabilize and minimize energy costs, and taken in a portfolio of spot, medium and long term contracts and RECs, may maximize benefits.

Similar to any new energy project, development costs of renewable energy resources are concentrated in the upfront installation capital costs. If project developers can only sell power on a short-term basis, the costs are higher because of the uncertainty of recouping project costs.

Long-term contracts allow the developer to spread the cost of the project over the length of the contract, thereby providing certainty and allowing for a lower unit power price. Many renewable projects were delayed due to financing difficulties as a result of the credit crisis and recession. These projects could be revived if financing can be structured using a combination of federal/state financial support and long-term contracts through the IPA. This funding may now be available through grants, loans and credit enhancement provided by the U.S. Department of Energy, Department of Commerce and Economic Opportunity and the Illinois Finance Authority. This government supported funding, combined with low, long-term interest rates, may lower the cost of capital and thereby reduce the cost of renewable energy projects that are developed before the end of 2012.

Given these factors, the IPA believes it is prudent to solicit proposals from renewable energy providers to secure a modest level of renewable energy under long-term PPAs. Because both the cost and the availability of other hedging options associated with cap and trade are unknown, the IPA has proposed to limit the volume of PPAs to 1,400,000 MWH per annum for ComEd, and 600,000 MWH per annum for Ameren. The long-term contracts will represent a small portion of the energy portfolio, currently estimated at approximately 3.5%.

3. PPA Structure.

The IPA provides the following details on the terms and conditions of the proposed PPA's. Generally, the PPAs will be of staggered duration and begin purchasing power as soon as June 2011. The PPAs will include an indexed escalator and will be bundled contracts to include both the sale of electricity and renewable energy credits (RECs) over the life of the PPA.

a. Length of PPA. To obtain a competitive cost-base for energy generated from renewable sources, the IPA will solicit bids for long term PPA contracts on a per MWh basis, with the following three alternatives: 10 years; 20 years; and 25 years. This model will provide a predictable revenue stream for projects, which will generate the interest of qualified project development groups.

b. Escalation / Unit Contingent. The IPA will solicit bids on both a fixed-rate basis, as well as a fixed-rate basis with indexed escalation. The bids will be unit contingent – payments will only be made by the purchaser for units of energy delivered.

c. Performance Guarantee. Bidders will commit and guarantee a minimum level of energy production to be delivered per year, and will pay to Purchasers an amount per MWh of energy generated and delivered that is below that minimum guaranteed level. Calculations of total energy delivered will be completed at the end of each year, or at some other mutually agreed upon interval, and payments for any shortfall will be immediately due and payable.

d. Location of Generation. The IPA procurement will bid out PPAs for renewable energy from all sources – whether in Illinois or outside.

e. Delivery Point. All responses to the request for proposal will be required to provide an all-in cost that incorporates the generation of the power and cost of interconnection to deliver the power generated to the relevant utility load zone. It is not contemplated that this cost would include regional or national capacity expansion requirements which may be addressed in future FERC initiatives.

f. Delivery Commencement. Timing of delivery of produced energy will depend on project type and completion. Final contracts will incorporate a set date for the commencement of delivery.

g. New vs. existing generation. The procurement will consider bids from new and existing qualified resources.

h. Bundled. The IPA procurement process will be on a bundled basis, for both the power generated from the project as well as the REC.

i. Contract Payment Conditionality. Payment obligation under the PPA will be limited by the utility's ability to recover the cost in rates charged to consumers.

j. Diversified Generation. The IPA believes it is prudent to further diversify the current energy exposure to predominantly nuclear, coal and natural gas fired power plants by modestly increasing the availability of renewable resources. Renewable resources provide an attractive mitigation to the aforementioned carbon legislation.

k. Application to RPS. The IPA may count the REC portion of the procurement toward the RPS requirements if doing so is beneficial to consumers. As this procurement is being conducted outside of the RPS context, the RPS requirements do not apply.

C. Load Forecast Adjustments (Responding to ComEd Objections at 10-12.)

ComEd believes that the IPA's Plan lacks details as to how the IPA will readjust load projections when there is a change in supply quantity of 200 MW or greater, and, as such, without details, it contends that this part of the Plan may not comply with PUA. In addition, ComEd proposes several issues to address regarding adjusting load forecasts, including whether changes would be implemented on an annual basis, a monthly basis, or a monthly on-peak or off-peak basis. ComEd is concerned that the Plan does not propose to consult with Commission staff, the procurement monitor, or utilities. ComEd does not offer specific alternative wording to the Plan to implement its suggestions. The IPA agrees that the Plan should be amended to include language that load forecast adjustments will be done in consultation with staff, the procurement monitor, and the utilities.

D. It is appropriate to oversubscribe for July and August to hedge against price volatility.

Next, ComEd seeks clarification of whether the IPA proposes to oversubscribe for July and August as was done for the last procurement event. ComEd Objections at 11. ComEd believes the continued inclusion of the 10% oversubscription was an inadvertent oversight and should be removed. ComEd also provides its analysis that suggests that the better approach is to procure at the 100% subscription level for all months. ComEd does not propose any specific alternative wording to implement its recommendations. The IPA agrees that the language used in the Plan inadvertently creates an inconsistency with respect to oversubscription for peak contracts in July and August. However, the IPA disagrees with ComEd's contention that better approach would be to procure at 100% during that period. The IPA maintains that the potential for spikes in consumption in the portfolio are greatest during the July and August peak periods. Oversubscription will mitigate weather risk associated with this period. Prices in the current market are relatively low, but future spot prices can be far above current future prices due to variables in plant outages, transmission constraints, natural gas prices, and evidence of growing economic recovery. To correct the inconsistency, while still preserving the recommendation that the Plan oversubscribe during the peak hours in the July and August delivery periods, the IPA recommends modifying the Plan's language at page 19:

> Oversubscription for peak hours in the July and August delivery periods has been used to mitigate weather risk in the last two procurement plans. ~~However, analysis of the results of this approach over the past two years indicates that the strategy has cost consumers more than what it has saved.~~ Therefore, the IPA proposes to procure at the 110% subscription level for July and

> August peak periods, but at the 100% subscription level for the remaining months in the Plan ~~all months in this Plan~~.

D. Updated Forecast Data (Responding to ComEd Objections at 13.)

While ComEd appropriately filed its load forecasts in July, 2009, it offered revisions using a more current forecast. ComEd notes that it issues "load forecasts twice a year, … once in the Spring and once in the Fall." ComEd Objections at 13. The forecast provided to the IPA for the Plan was based on ComEd's Spring 2009 load forecast. ComEd's Fall aggregate forecast shows lower expected loads due, in part, to the "continued deteriorating economic conditions" and, as such, it recommends that the Commission require the updated forecast be used. ComEd Objections at 13. ComEd states that, on average, expected loads have dropped 63 MW per month, which "equates to ~ 550,000 MWH for the 2010-11 period. *Id*. ComEd provided revised Tables F, T, U, V-1 and V-2, as well as Attachments D, H, I and J to the Plan, which all reflect the updated forecast data.

The IPA agrees that ComEd's revised forecast should be incorporated into the Plan. The IPA recommends that ComEd's revised Tables F, T, U, V-1 and V-2, as well as Attachments D, H, I and J (attached as Exhibit A), be incorporated into the Plan, and that the Plan be modified accordingly.

E. Miscellaneous Corrections (Responding to ComEd Objections at 15-16.)

The IPA agrees with the following corrections offered by ComEd and recommends their inclusion into the Plan:

- Table F on page 5: under the column labeled "SF (MWH)" for "September-10" the correct number is 1,788,543 and under the column labeled "Total (MWH)" for "September-10" the correct number is 3,100,995.
- On page 20, in the second paragraph from the bottom the last sentence should read as follows: "Target volumes for Ameren

and ComEd would range around 600,000 MWH/annum, and 1,400,000 MWH/annum, respectively, representing approximately 3.5% of annualized volumes for each utility."

- On page 24, in the second full paragraph should refer to 2013-2014 period as being beyond the swap.
- Table V-2 on page 48: delete the column labeled "2010 IPA Procurement Cycle A (MW)".
- Table V-2 on page 49: Projected Volume (MW) for December 2012, should be 4,600.
- On page 51, in the second paragraph from the bottom, the reference to Ameren should be ComEd.
- Attachment I of the Plan, Off-Peak Projected Volume (MW) for December 2012, should be 4,600.
- Attachment J of the Plan, Off-Peak Projected Volume (MW) for December 2012, should be 4,600.

II. Response to Ameren

A. Long-Term Renewable Energy Supply Contracts (Responding to Ameren Objections at 1-6.)

Ameren takes issue with several aspects of the Plan as it relates to the proposal to issue solicitations for longer term renewable energy supply contracts. Each issue will be addressed in turn below.

First, Ameren seeks a definition of "long-term" as it relates to the renewable energy supply proposal. Ameren Objections at 2. Ameren believes that the term of renewable energy supply contracts should be 10 years or less stating that this time frame will "help to minimize net present value of [longer term] contracts and hence the effect on the AIUs balance sheets", as well as, benefit the benchmarking process, required of section 1-75(c)(1) of the Illinois Power Agency Act. *Id.*

The IPA will solicit proposals of a series of set lengths and durations, and select contracts based on lowest realized costs to eligible retail customers. Term and financing costs will be drivers in establishing realized costs. As such, the IPA believes that Plan is clear in this respect, and recommends that no modifications be made to the Plan at this time. (See also discussion above in Section I.B.)

Second, Ameren seeks clarity regarding whether long-term contacts will be for fixed quantities of energy and RECs or if they will be unit contingent. Ameren Objection at 3. Ameren supports the unit contingent approach because this approach "makes contract development and administration much simpler in that it avoids the need to address how and when energy would be replaced should the renewable energy facility for which the product is intended to originate is unable to meet the contract quantity." *Id.* Ameren further argues that the unit contingent approach would also prevent against the supplier's ability to game the contract. As described above, the IPA agrees and recommends that long-term contracts be unit contingent. (See also discussion above in Section I.B.3.b.)

Third, Ameren suggests that the Plan be clear as to whether capacity is or is not included in the product definition. Ameren Objections at 4. While Ameren does not have a preference, it suggests that if capacity is included in the product definition, that the Commission make it the "seller's responsibility to register that capacity at MISO." *Id.* The IPA agrees and recommends that capacity be included in the product definitions, and that the seller register the capacity with MISO or PJM.

Next, Ameren seeks clarity as to where long-term renewable energy will be delivered. Ameren prefers such energy "be delivered at its load zone because it will eliminate any congestion cost to customers that would be incurred from moving energy from the generator to the load zone." Ameren Objections at 4. Ameren notes that there are competing interests relating to the appropriate delivery point and argues if the generator bus as the delivery point, it will complicate the RFP process, as well as, add to the complexities of managing cost estimates. As described above, the IPA agrees and recommends that longer term renewable energy be delivered at the load zone. (See also discussion above in Section I.B.)

Ameren suggests that the Plan clarify the methodology for determining how the resulting contracts will count toward the Renewable Resources Budget ("RRB"). Ameren Objections at 5. As described above, the longer term renewable PPA procurement is being conducted outside of the RPS context, therefore the RPS requirements are not applicable. The IPA may count the REC portion of the procurement toward the RPS requirements if doing so is beneficial to consumers.

Finally, Ameren seeks clarification on how the IPA intends to adjust the quantities of energy swap contracts based on the longer term renewable energy contract proposal, or if the IPA is intending to change them at all. Ameren asserts that "because the IPA Plan does not seek to procure energy along with the RECs until June 2011 that there is no need to change the energy swap quantities included in these tables other than to restore the 1.1 hedge ratios for the July and August on-peak periods based on what appears to be the IPA's recommendation." Ameren Objections at 6-7.

The IPA generally agrees with Ameren that given the uncertainty of whether long-term renewable contracts will be included in the procured electricity, and the uncertainty of the type of long-term renewable energy, no changes should be made to either the swap quantities or the hedging levels.

B Demand Response (Responding to Ameren's Objections at 7-8.)

Ameren suggests that "successful demand response suppliers should be directly responsible for satisfying the MISO registration requirements." The IPA agrees with Ameren's recommendations. Section 16-111.5(b)(3)(ii)(B) of the PUA requires that demand response procured through the Plan "satisfy the demand-response requirements of the regional transmission organization market in which the utility's service territory is located, including, but not limited to, any applicable capacity or dispatch requirements." 220 ILCS 5/16-111.5(b)(3)(ii)(B). The IPA also recommends that the Plan be modified with respect to ComEd's procurement to reflect a similar requirement – that successful demand response suppliers be directly responsible for satisfying PJM registration requirements.

C. Wholesale Products to be Procured (Responding to Ameren's Objections at 8.)

Ameren recommends that the Plan be clarified in the written portion of the Plan regarding the IPA's intent to hedge at a ratio of 1.1 during the July and August on-peak periods. The IPA agrees and suggests modifying the Plan as suggested above in Section I. C.

D. Long-term Portfolio (Responding to Ameren's Objections at 8.)

Ameren asserts that the target volumes for proposed long-term PPAs for Ameren were mistakenly identified as 1,400,000 MWh. Ameren is correct, and the appropriate volume of long-term PPAs for Ameren should read 600,000 MWh.

III. Response to Staff

A. Laddering (Responding to Staff Response and Objections at 4-5.)

Staff objects that the Plan does not report any evaluation and recommends that the plan be modified to include the IPA's analysis of costs/premiums. If no such analysis has been performed, then the Staff recommends that the Commission encourage the IPA to perform such an analysis prior to next year's Plan filing.

The IPA opposes the Staff's request that the IPA conduct an analysis of the credit costs or risk premiums embedded in the prices for energy procured under the laddered approach. First, by submitting requests for bids for the requirements under the Plan in laddered increments, the Plan already reduces risk for bidders, and therefore reduces the risk premiums. Moreover, because the requests for bids are available to all bidders, the risk premiums would be equalized among all bidders for any particular contract. Finally, the laddered approach is intended provide price stability for energy purchases over time, even if there are different risk premiums associated with different contract years. Therefore, conducting an analysis of the risk premium associated with the laddered approach is not necessary to accomplish the goals and objectives of the Plan.

B. Hedging Ratio (Responding to Staff Response and Objections at 5-6.)

This aspect of the Plan was addressed in Section I. D. above where the IPA supports oversubscribing for peak contracts in July and August, and provides clarifying language in accordance with this proposal.

C. Procurement Events (Responding to Staff Response and Objections at 6-10.)

Staff objects that the Plan provides inadequate justification for shifting to a single event for the procurement of RECs, that the Plan provides little explanation of how the single procurement event will be conducted, and that the Plan does not address various problems associated with such a policy shift. Staff Response and Objections at 10. Staff poses a series of questions regarding this issue. Staff recommends that the Plan be revised to eliminate the proposal to use one rather than two events to procure RECs, unless and until the IPA provides a justification for the switch in policy.

The IPA seeks a single procurement event for the RPS because the it believes that a single procurement event will increase competition and capture process efficiencies. Staff recognizes this when its states that "requiring bidders to offer all their supply in one event may lead to more aggressive (lower-priced) bidding since bidders will know that . . . they will only have 'one bite at the apple.'" Staff Response and Objections at 8. A single registration process will also reduce the burdens for bidders, and will provide for standardized definitions, terms and conditions for RECs statewide.

D. Long-term PPA with Renewable Energy Producers (Responding to Staff Response and Objections at 10-18.)

Staff is not, in principle, opposed to long-run PPAs with renewable or conventional power producers. Staff Response and Objections at 10. However, it believes the Plan's proposal lacks justification and details; and it believes the deficiencies are unlikely to be rectified in the time available for this proceeding. Staff Response and Objections at 11. Staff suggests that this aspect of the proposal be removed from this year's Plan but not foreclosed from future plans.

The IPA believes that opportunity warrants action, even if that requires changes in course and schedules from the norm. Financial incentives for the development of renewable and low-carbon assets are available in the short term and not likely available in the next planning cycle. The IPA will work with the utilities, staff, and other interested entities during the Plan review at the Commission to develop a more robust approach should the Commission agree on the underlying value of moving forward with the approach put forth in the Plan. (See also discussion above in Section I.B.)

Staff provides various suggestions as to what details should be covered if the proposal remains or is presented in future plans, including, for example, the type of PPA contract (fixed and fixed with CPI escalations), whether the energy will be provided on a "firm" or "unit contingent basis" (unit contingent), the acceptable locations of the generating resources (no restrictions), the length of proposed long-term contracts (10 year, 20 year, 25 year), the new and/or existing resources (both) and generation start date justification (no restriction). The IPA has provided these details in the discussion at Section I.B. above. Remaining contract terms will be established according to the process established in Section 16-111.5(e) and in the contracts among the parties.

Finally, Staff addresses what it believes are issues concerning the intermittent nature of wind resources. Staff Responses and Objections at 14. The IPA notes that the longer term procurement is not limited to wind, but all renewable resources. In addition, at the volumes considered in the plan, variability of wind and other renewable resources is a manageable issue.

E. Demand Response Procurement (Responding to Staff Response and Objections at 18-21.)

Staff seeks additional details supporting the implementation for the demand response procurement. First, Staff correctly identifies a typographical error at page 52 of the Plan: the phrase "that will incent the development of demand response programs within the *Ameren* territory" should read "that will incent the development of demand response programs within the *ComEd* territory Staff Response and Objections at 19. Staff then asserts that the Plan be modified to recognize that the PJM Reliability Pricing Model ("RPM") "automatically satisfies the requirements of 220 ILCS 5/16-111.5(b)(3)(ii)." Staff's presumption and reading of the PUA is not accurate. Section 16-111.5(b)(3)(ii) of the PUA requires the Plan include a mix of demand response products where the cost of the demand response is lower than procuring comparable capacity products. 220 ILCS 5/16-111.5(b)(3)(ii). However, these demand response products are, *inter alia,* to be procured *from* eligible retail customers. *Id.* PJM's demand response program relies on curtailment service providers ("CSPs"), who act as agents for the customers in participating in demand response.[2] It is not clear that the demand response measures made available through PJM's demand response program would be acquired from or on behalf of eligible retail customers participating in the Plan. In addition, any qualified capacity procured from demand response resources in the ComEd region that is bid at lower than the PJM RPM prices will be procured under the Plan. The result is that, unless new demand response measures are developed, there will be less demand response products available to ComEd through the PJM RPM offering, particularly in future periods. Therefore, the Plan is intended to solicit bids for additional demand response products that also meet the requirements of the PUA, including the requirement that the demand response products be lower in cost than procuring comparable capacity requirements.

Staff next criticizes the recommendation that a second demand response procurement event occur in the fall in the event that the Spring demand response procurement event is unsuccessful. Staff Response and Objections at 20. The IPA is also unclear whether a second demand response procurement event would produce qualified demand response products. However, the intent of the Plan is to conduct a procurement event in the Spring, and plan for a procurement event in the Fall to account for the possibility that demand response projects will not yet be available in the market by the Spring 2010. A second demand response procurement event offers the opportunity to solicit bids with different or alternative terms and conditions are developed from the first procurement event, and provide additional incentives to develop such projects.

Staff further requests an explanation or clarification for the Plan's proposal to procure demand response products through 5-year contracts, while comparable capacity products are

[2] *See e.g. http://www.pjm.com/markets-and-operations/demand-response.aspx.*

being procured as one-month contracts that are bought separately on a laddered basis for up to three years. Staff Response and Objections at 21. Staff's comments are based on a mistaken reading of the Plan – the 5-year term for demand response projects would occur only for projects that are bid in the Fall 2010 bid, which would occur only if the first solicitation is unsuccessful. The Plan proposes that demand response providers participating in the spring capacity solicitation be allowed to bid on all months and volumes under the same terms and conditions as other traditional suppliers. If the secondary solicitation is necessary, the Plan proposes that the 5-year term for demand response projects be included to provide stability that may be necessary to incent the development of alternative demand response projects.

H. General Typographical Corrections Plan (Responding to Staff Response and Objections at 26-28.)

The IPA agrees with the following correction offered by Staff and recommends its inclusion into the Plan: Page 40 – update the definition of *renewable energy resource* as indicated in Staff's Response and Objections.

IV. Response to Constellation

A. Demand Response (Responding to Constellation Objections at 4-5.)

Constellation also requests additional clarity on the Plan's intentions regarding the procurement of demand response, particularly whether the Plan intends to limit participation in the demand response procurement exclusively to demand response resources associated with "eligible retail customers." Constellation Objections at 4. Constellation advocates that the Plan pursue a demand response procurement strategy that attracts the largest possible amount of demand response resources at the lowest possible cost, and recommends that the Plan include demand response resources from all retail customers in the ComEd and Ameren service territories, not just eligible retail customers. Constellation Objections at 4-5. Constellation also advocates that the Plan be revised to include a provision to allow workshops and other planning sessions devoted to the demand response procurement events. *Id.*

As noted above, Section 16-111.5(b)(3)(ii) of the PUA requires the Plan to include a mix of demand response products where the cost of the demand response is lower than procuring comparable capacity products. 220 ILCS 5/16-111.5(b)(3)(ii). However, these demand response products are, *inter alia,* to be procured *from* eligible retail customers. Therefore, the IPA believes that the PUA limits the demand response products to be procured from eligible retail customers. The IPA also agrees to conduct workshops and/or other planning sessions devoted to the demand response procurement events in order to further develop these issues.

B. Measures to ensure cost-effective REC Procurement (Responding to Constellation Objections at 7-8.)

Constellation requests that the Plan be clarified to identify which products are to be included in REC procurements – specifically environmental attributes, e.g., NOx. Constellation Objections at 7. The IPA agrees that the products to be included in the REC procurements should be identified, but the IPA disagrees that the Plan should specifically identify the REC products. The purpose of the Plan, with respect to the renewable portfolio standard, is to identify the volume of renewable energy supplies required for Ameren and ComEd to satisfy the RPS set forth in Section 1-75(c)(1) of the IPA Act. There are certain categories of RECs that are required to be acquired under Section 1-75(c)(1), and based on price, subject to certain benchmarks. The IPA believes that the products to be acquired could not be fixed as part of the Plan, because the price and the other factors in the IPA Act have priority. Instead, the products to be acquired should be disclosed and identified through the public comment phase of the RFP.

Constellation also suggests that Green-e certified products should be permitted to be utilized for REC supply in future REC procurements since it will provide for a greater number of RECs, and a more competitive and potentially more cost-effective rate for consumers. Constellation Objections at 7-8. The IPA appreciates Constellation's suggestion and will take it under advisement with regard to whether the products are consistent with the language in the Illinois RPS.

V. Response to Exelon Generation Company

Exelon Generation Company opposes the separate treatment of renewables in the Plan. It argues that to the extent that renewables are cheaper than other forms of generated energy, they will win the bid; otherwise renewables will increase costs to consumers. ExGen Amended Objections at 2.

While the IPA agrees that it may be beneficial for consumers to pursue longer term PPAs for standard, non-renewable energy, the IPA disagrees with ExGen's analysis. First, the IPA Act requires that a minimum percentage of Ameren and ComEd's total energy supply include a portion of energy derived from cost-effective renewable resources. 20 ILCS 3855/1-75(c)(1). The IPA has no option but to comply with the RPS. Second, the Plan proposes long term PPAs for renewable energy supplies to satisfy eligible retail customers' energy needs outside of the RPS. The IPA believes that long term, renewable PPAs can provide eligible retail customers with a long-term hedge against potential new costs that may be applied against carbon-based energy. The Plan proposes long term PPAs to seek electricity from resources that would have low to no exposure to carbon risks – not renewable energy per se.

Conclusion

The Illinois Power Agency's Procurement Plan is consistent with the requirements of the Act, meets the needs of customers, and should be confirmed by the Commission as specifically modified herein.

Dated: October 16, 2009

Respectfully submitted,

Illinois Power Agency

By:______________________________

One of its Attorneys

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY **Petition for Approval of Procurement Plan**	: : : : :	**Docket No. 09-0373**

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

VERIFICATION OF MARK PRUITT

I, Mark Pruitt, being duly first duly sworn and on oath state that I am Director of the Illinois Power Agency, and am competent to testify that I have read the **Verified Response of the Illinois Power Agency to Objections to Its Initial Power Procurement Plan** submitted to the Illinois Commerce Commission on October 16, 2009 (the "IPA Response"), that I am familiar with facts sets forth in the IPA Response, and those facts are true and correct to the best of my knowledge, information and belief.

Mark Pruitt

Carmen Bye

Subscribed and sworn before me
This 16th day of October 2009

OFFICIAL SEAL
CARMEN BYE
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:05/09/10

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