STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	:	
	:	No. 10-0563
Petition for Approval of the	:	
220 ILLS 5/16-111.5(d) Procurement Plan	:	

COMMONWEALTH EDISON COMPANY'S RESPONSE TO THE VERIFIED SUPPLEMENTAL COMMENTS OF IBERDROLA RENEWABLES TO THE ILLINOIS POWER AGENCY'S 2011 PROCUREMENT PLAN

Pursuant to the Notice of Administrative Law Judge's Ruling dated November 12, 2010, Commonwealth Edison Company ("ComEd") responds as follows to the Verified Supplemental Comments of Iberdrola Renewables, Inc. ("Iberdrola") to the Illinois Power Authority 2011 Procurement Plan ("Supplemental Comments").[1]

ComEd fully supports Iberdrola's proposal to drop its request for the procurement of long-term renewables in the 2011 procurement event. As ComEd and others pointed out in prior comments, Iberdrola presented absolutely no support for such a proposal.[2]

ComEd strongly opposes Iberdrola's other new proposals. In particular, ComEd continues to oppose the procurement of 5-year renewable energy certificates ("RECs") for the reasons stated previously and below. Moreover, ComEd has demonstrated a willingness to participate in procurement-related workshops that comply with the Public Utilities Act ("PUA") and that are structured so as to be an effective and efficient use of the participants' time and resources. However, Iberdrola's proposal is both unlawful and a misuse of the parties resources.

---

[1] As of noon on November 16, 2010, Iberdrola had not complied with the portion of the Notice of Administrative Law Judge's Ruling providing that "Iberdrola Renewables, Inc. must indicate via a 'Compliance Filing' on November 15, 2010 whether it intends its compromise position to be effective only in the event that all other parties accept/do not object to the compromise position as set forth in its November 10, 2010 Supplemental Comments."

[2] ComEd Response to Objections, pp. 1-2.

Iberdrola's proposal is contrary to the PUA and due process guarantees. It also focuses on issues that are both premature and irrelevant until a demonstration is made that the procurement of long-term renewables is reasonable and appropriate under the standards set out in the PUA. ComEd cannot support such a proposal.

I. BACKGROUND

Appendix K and the procurement of long-term renewables that was approved by the Illinois Commerce Commission ("ICC") in Docket No. 09-0373 are not issues in this proceeding. Nevertheless, the misstatements and mischaracterizations by Iberdrola relating to the Appendix K implementation process cannot go unanswered.

The fact is that the implementation process has gone quite well. A large number of bidders have participated in the process, and it appears that a significant number of bids will be received. The IPA conducted six workshops and entertained two separate rounds of written comments on the proposed contracts. Those comments resulted in numerous changes to the contracts. ComEd expects that the bidding process will be quite successful, and will largely vindicate the reasonableness of Appendix K and the standard form contract that is being used.

While most of the participants in the Appendix K workshop process took the opportunity to propose constructive revisions to the proposed contract and bidding process, not all did so. Several of the participants spent much of their effort complaining about the Commission-approved Appendix K and about the requirements of the PUA. In particular, they complained about the statutory cap on cost increases that can be passed onto consumers[3] and the provisions

[3] 20 ILCS 3855/1-75(c)(2)

in the PUA providing for cost recovery for utilities.[4] It appears that those are the same issues on which Iberdrola wishes to focus its proposed workshops.

II. 5-YEAR RECS

In its Supplemental Comments, Iberdrola proposes to drop the request for additional long-term renewables in this procurement cycle and instead supports Wind on the Wire's ("WOW") proposal for procurement of five-year RECs. While ComEd agrees that dropping the notion of long-term renewables in this procurement proceeding is the correct course of action, the proposal to procure 5-year RECs should also be rejected for the following reasons.[5]

A. A Portfolio Strategy is Needed Before, Not After, Procurements are Made

While WOW – and now Iberdrola – argue for what they call "balance" in the duration (short-term, mid-term and long-term) of RECs purchased on behalf of customers, neither offers any overall portfolio strategy. As ComEd pointed out, WOW picked out a target without any support as to the desirability or logic of such selection.[6] And, Iberdrola offers nothing else. If a "balanced" portfolio of REC durations is desired, a rational approach would be to establish the long run targeted amounts for each bucket of RECs and then use subsequent procurement events to achieve these targets. This is, in essence, the same approach the IPA has successfully used in standard product energy purchases for the last few years. The IPA systematically seeks to purchase 30%, 35% and 35% of its total energy requirements over a three year period. The IPA arrived at these targeted amounts by conducting a thorough analysis that demonstrated this to be

---

[4] 220 ILCS 5/16-111.5(l).

[5] Supplemental Comments, pp. 9-10.

[6] WOW Objections, pp. 3-11; ComEd Response to Objections, pp. 9-11.

the optimal procurement strategy. If longer-term REC's are to be acquired, a similar approach based upon a similar type of analysis should be followed before any procurement takes place.

B. Under A Reasonable Portfolio Strategy, No Additional Multi-Year RECs are Needed at This Time

As stated in its previous comments, ComEd believes the procurement of low cost annual RECs offers the greatest value to our customers as well as the greatest chance of meeting the renewable portfolio standards ("RPS") requirements in the future.[7] Relying on annual RECs also helps minimize the risk of customer switching. While ComEd does not support the development of a REC allocation methodology without the necessary supporting analysis, if the Commission nonetheless approves such a method in this proceeding without such an analysis, ComEd recommends a portfolio of 50% annual RECs and 50% multi-year RECs. The multi-year RECs can be further split between long-term and three-year RECs. Under such a balanced portfolio, there is no need for additional multi-year RECS in this procurement cycle, as shown in the following table based on WOW's estimates:

		Base REC Target Portfolio			**Committed Volumes**			**Open Volumes**		
		50%	25%	25%						
	REC Target	Annual	Multi-year (3 yr)	Multi-year (LT)	Annual	Multi-year (3 yr)	Multi-year (LT)	Annual	Multi-year (3 yr)	Multi-year (LT)
2011-12	2,117,054	1,058,527	529,264	529,264	0	0	0	2,117,054	-	-
2012-13	2,198,208	1,099,104	549,552	549,552	0	0	1,400,000	798,208	-	-
2013-14	2,494,703	1,247,351	623,676	623,676	0	0	1,400,000	1,094,703	-	-
2014-15	2,829,189	1,414,595	707,297	707,297	0	0	1,400,000	1,414,595	14,595	-
2015-16	3,153,729	1,576,864	788,432	788,432	0	0	1,400,000	1,576,864	176,864	-
2016-17	3,639,445	1,819,723	909,861	909,861	0	0	1,400,000	1,819,723	419,723	-
2017-18	4,125,470	2,062,735	1,031,367	1,031,367	0	0	1,400,000	2,062,735	662,735	-
2018-19	4,633,627	2,316,813	1,158,407	1,158,407	0	0	1,400,000	2,316,813	916,813	-
2019-20	5,148,681	2,574,341	1,287,170	1,287,170	0	0	1,400,000	2,574,341	1,174,341	-

Note: 2011-12 Multi-year open volumes limited by following year open volumes

If the targeted amount of annual RECs were lowered to 33.3%, there would still be only a small (65,000 RECS/year) need for multi-year RECs this cycle:

[7] ComEd Response to Objections, pp. 9-11.

		Alternate REC Target Portfolio			Committed Volumes			Open Volumes		
		33%	33%	33%						
	REC Target	Annual	Multi-year (3 yr)	Multi-year (LT)	Annual	Multi-year (3 yr)	Multi-year (LT)	Annual	Multi-year (3 yr)	Multi-year (LT)
2011-12	2,117,054	705,685	705,685	705,685	0	0	0	2,051,582	65,472	-
2012-13	2,198,208	732,736	732,736	732,736	0	0	1,400,000	732,736	65,472	-
2013-14	2,494,703	831,568	831,568	831,568	0	0	1,400,000	831,568	263,135	-
2014-15	2,829,189	943,063	943,063	943,063	0	0	1,400,000	943,063	486,126	-
2015-16	3,153,729	1,051,243	1,051,243	1,051,243	0	0	1,400,000	1,051,243	702,486	-
2016-17	3,639,445	1,213,148	1,213,148	1,213,148	0	0	1,400,000	1,213,148	1,026,297	-
2017-18	4,125,470	1,375,157	1,375,157	1,375,157	0	0	1,400,000	1,375,157	1,350,313	-
2018-19	4,633,627	1,544,542	1,544,542	1,544,542	0	0	1,400,000	1,544,542	1,544,542	144,542
2019-20	5,148,681	1,716,227	1,716,227	1,716,227	0	0	1,400,000	1,716,227	1,716,227	316,227

Note: 2011-12 Multi-year open volumes limited by following year open volumes

As seen above, there is no reasonable scenario in which anywhere near the 550,000 multi-year RECs proposed by WOW and supported by Iberdrola are needed for the next few years.

To the extent any allocation of mid-term RECs is made, ComEd supports three-year rather than five-year RECs. Iberdrola has candidly acknowledged that: “There can be no argument that long term renewable contracts reflect a premium over other types of energy contracts.”[8] Staff has also expressed concern with this term premium.[9] Three-year RECs would minimize the concern, to the benefit of consumers. Three-year RECs are also consistent with the term sought in the energy procurement, and would minimize credit risk for ComEd exposure and/or collateral requirements for suppliers. These factors, too, minimize cost and risk to consumers.

The Commission itself has also previously addressed the term premium issue in the context of energy supply. In Docket No. 05-0159, the Commission rejected a proposal to procure supply pursuant to 5-year contracts. The Commission concluded instead that “[i]n order to avoid the excessive risk premiums associated with 5-year contracts, deter uneconomic switching, and prevent suppliers from exceeding the load cap adopted herein, the Commission

[8] Ibderdrola’s Reply to Certain Objections, p. 15. Iberdrola also acknowledges Constellation’s belief that long-term contracts necessarily include a premium. *See* Iberdrola Supplemental Comments, p. 5.

[9] Staff Objections, p. 9 (risk of long-term premiums should “lead to more caution about expanding … long-run hedges”).

adopts an annually-revised portfolio of three-year supply contracts for serving ComEd's residential and small commercial customers."[10]

C. Multi-Year RECs are More Appropriately Purchased From the Alternative Compliance Payments ("ACP") Collected by the IPA

As ComEd demonstrated in its previous comments, a key reason that long-term RECs (and energy) purchases are inappropriate for our portfolio is the trend of customer migration away from utilities and to RES suppliers.[11] Because the procurement process applies only to eligible retail customers of ComEd, long-term contracts expose the remaining customers to greater risk. Moreover, ComEd notes, as did Constellation in its Response,[12] that the ACP payments collected by the IPA are to be used by the IPA to procure renewable resources and, whenever possible, enter into long-term contracts.[13] Given the migration of customers from ComEd to the RES, this is clearly where any long-term contracting belongs.

D. ComEd Recommendation

ComEd recommends that all future long-term procurements be made with the ACP funds collected by the IPA. This would mean that the renewables budget derived from ComEd customers should be totally allocated to annual RECs. This is the highest value, lowest risk strategy for ComEd customers.

If the Commission decides instead to require future multi-year REC procurements from ComEd customer funds, then ComEd strongly recommends a target portfolio be established before such procurements are approved. ComEd further recommends that at least 50% of REC

---

[10] Order of January 24, 2006 in Docket No. 05-0159, pp. 120-1.

[11] ComEd Response to Objections, pp. 5-7.

[12] Constellation Response to Objections, pp. 2-3.

[13] 20 ILCS 3855/1-56(c)

purchases be reserved for annual RECs and that mid-term RECs be limited to a three-year term. In addition, the RPS preference requirements outlined in the PUA should apply to all future procurements.[14]

III. LONG-TERM RENEWABLE CONTRACT WORKSHOPS

Iberdrola proposes that "workshops" be held regarding long-term renewable contract issues. However, Iberdrola's proposal is not for workshops in any sense that the Commission normally uses that term. Instead, these "workshops" will be led by a "Facilitator" who will not only facilitate, but who would also be the "final arbiter" of any disputes.[15] While ComEd has always been a strong supporter of true workshop processes, ComEd cannot support the Iberdrola proposal. That proposal totally ignores the process and requirements set out in the PUA for procuring renewable energy. In addition, it proposes to unlawfully delegate power to a "Facilitator."

A. Substantive Flaws in the Proposal

Iberdrola appears to assume that the Illinois Power Agency ("IPA") is required to procure long-term renewable energy. That is not the case. While the IPA has discretion to propose the procurement of long-term renewables, any such proposal must meet the standards set forth in section 16-111.5 of the PUA.[16] The PUA requires a demonstration that any such proposal "will 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."[17] In

---

[14] 20 ILCS 3855/1-75(c)(1) & (3)

[15] Supplemental Comments, pp. 11-2.

[16] 20 ILCS 3855/1-75(f).

[17] 220 ILCS 5/16-111.5(d)(4) (emphasis added).

addition, such a proposal must undergo a risk analysis focusing on price risk and load uncertainty.[18]

Iberdrola has wisely withdrawn its request in this proceeding for the procurement of long-term renewables. It appears Iberdrola did so because it made no attempt in this proceeding to present any evidence addressing the standards described above. Thus, the upcoming procurement event cannot include long-term renewables, and it is highly uncertain when, or even whether, any future procurement events will include long-term renewables. As the tables set out in Section II(B), above, demonstrate, there will be little need for long-term renewables in the renewable portfolio for at least 8-10 years.[19]

There is simply no reason at this time for the parties to spend resources negotiating the terms of a contract that is not needed now and may never be needed. There are, in short, no long term procurement contracts to now negotiate and no indication of what resources, if any, might pass the PUA's tests in the future. Therefore, holding a workshop process now would be both premature and speculative.

B. <u>Procedural and Due Process Flaws in the Proposal</u>

Iberdrola's proposal also violates the PUA and due process guarantees. The PUA provides that the IPA has the authority to develop any contract for the procurement of supply, subject to the statutory requirement that contracts be developed "in consultation with the utilities, the Commission, and other interested parties and subject to Commission oversight." [20] Nothing in the PUA permits the Commission to exercise that authority in the first place, let alone to

---

[18] 220 ILCS 5/16-111.5(b)(3)(vi).

[19] *See also* the discussion of the uncertainty of any need for long-term renewables in ComEd's Response to Objections, pp. 4-7.

[20] 20 ILCS 5/16-111.5(c)(5) and (e)(2).

delegate it to a workshop process overseen by a "Facilitator" with authority to make "final" decisions.

The Iberdrola proposal violates the PUA in another respect. A major issue for discussion at the proposed workshops is to be risk allocation as between ratepayers, utilities and suppliers.[21] This issue was also subject to much discussion at the IPA's recent workshops. The suppliers strongly dislike any cap on the amount of costs that can be passed onto ratepayers, as well as allowing for full cost recovery for the utilities. However, this risk assessment has already been undertaken by the Illinois General Assembly and that body has already determined the appropriate risk allocation.[22] This determination is not subject to discussion and negotiation in a workshop session. It is written into the PUA and must be followed.

Finally, to the extent that the property rights of utilities are implicated – and they are if the utilities would be compelled to enter into contracts flowing from the workshops – the purported grant of "final" decisional authority to a facilitator would deny ComEd's rights under the PUA, the Illinois Administrative Procedure Act, and the requirements of due process.

In short, the Iberdrola proposal for contract workshops is premature, speculative, and illegal. Iberdrola is simply asking the Commission to rewrite the PUA. The Commission should decline to do so.

[21] Supplemental Comments, p. 12.

[22] See 20 ILCS 3855/1-75(c)(2) for the cost cap provisions, and 220 ILCS 5/16-111.5(l) for the utility cost recovery provisions.

WHEREFORE, for all the foregoing reasons, ComEd submits that the proposals contained in Iberdrola's Supplemental Comments should be rejected except for Iberdrola's proposal to drop its request for additional long-term renewables in this procurement cycle.

Dated: November 16, 2010

Respectfully submitted,

By:__________________________________
One of the attorneys for
Commonwealth Edison Company

Thomas S. O'Neill
Senior Vice President and General Counsel
Commonwealth Edison Company
440 South LaSalle St., Suite 3300
Chicago, IL 60605
thomas.oneill@ComEd.com

Thomas J. Russell
10 S. Dearborn, Suite 4900
Chicago, IL 60603
(312) 394-5400
thomas.russell@exeloncorp.com

E. Glenn Rippie
Carla Scarsella
Rooney Rippie & Ratnaswamy LLP
350 W. Hubbard Street , Suite 430
Chicago, Illinois 60654
(312) 447-2800
glenn.rippie@r3law.com
carla.scarsella@r3law.com

Counsel for Commonwealth Edison Company

VERIFICATION

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, William P. McNeil, having been duly sworn, do hereby say and depose under oath based on my personal knowledge as follows:

1. I am Vice President – Energy Acquisition for Commonwealth Edison Company ("ComEd") and have responsibility for managing power procurement requirements to serve ComEd's retail and wholesale load obligations.

2. I swear and affirm that the facts stated in the foregoing "Commonwealth Edison Company's Response to the Verified Supplemental Comments of Iberdrola Renewables to the Illinois Power Agency's 2011 Procurement Plan" are true and correct to the best of my knowledge and ability.

FURTHER AFFIANT SAYETH NOT.

William P. McNeil

William P. McNeil

SUBSCRIBED AND SWORN to before me
this 16th day of November, 2010

Kelly V. Harvey

Notary Public

OFFICIAL SEAL KVH
KELLY V HARVEY
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:05/31/11