

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

ILLINOIS POWER AGENCY	:	
	:	
Petition for Approval of the	:	No. 11-0660
220 ILCS 5/16-111.5(d) Procurement Plan	:	

**COMMONWEALTH EDISON COMPANY'S**  
**VERIFIED REPLY TO CERTAIN RESPONSES TO**  
**OBJECTIONS TO THE IPA PROCUREMENT PLAN**

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Commonwealth Edison Company (“ComEd”), pursuant to Section 16-111.5(d)(3) of the Illinois Public Utilities Act (“PUA”) and the October 6, 2011 ruling of the Administrative Law Judge, submits this verified reply (“Reply”) to certain responses (“Responses”) to objections (“Objections”) filed with respect to the proposed 2012 Power Procurement Plan (“Plan”). This Reply addresses responses filed by the Illinois Power Agency (“IPA”), the Illinois Commerce Commission (“ICC” or “Commission”) Staff (“Staff”), Ameren Illinois Utilities (“Ameren”), Wind on the Wires (“WOW”), the Solar Alliance, the Vote Solar Initiative (“Solar Initiative”), Illinois Solar Energy Association (“ISEA”), Interstate Renewable Energy Council (“IREC”), the Environmental Law & Policy Center (“ELPC”), the FutureGen Industrial Alliance, Inc. (the “FutureGen Alliance”), the Illinois Competitive Energy Association (“ICEA”), and the Retail Energy Supply Association (“RESA”). This Reply focuses on the most important issues. The fact that ComEd does not reply to a particular Response or argument does not imply agreement or acceptance by ComEd.

ComEd also continues to note that a number of Responses, like many Objections, are argument, but not evidence. To be evidence, factual statements must be attested to by a

competent witness, not counsel.<sup>1</sup> Factual statements and materials must also be otherwise properly admissible.<sup>2</sup> For example, hearsay documents (*i.e.*, documents whose author is not a verifier/witness) are not evidence of the truth of the matters asserted therein, and cannot create a genuine issue of material fact or support a Commission factual finding.<sup>3</sup> And, needless to say, citing another party's pleading<sup>4</sup> is not evidence.

## **I. STATUS AND EVOLUTION OF THE IPA'S RECOMMENDED PLAN**

The IPA, in its Response, proposes several important changes to the Plan in response to parties' comments. ComEd welcomes these changes and appreciates the IPA's openness to the evidence and other information provided in the parties' Objections. In particular, the IPA states:

- “After careful consideration of the parties’ comments and objections regarding the Plan’s proposal to solicit multi-year REC’s, the IPA is persuaded that the 2012 Plan be revised to remove [the proposal to solicit additional long-term REC’s] from the this year’s Plan.”<sup>5</sup> ComEd concurs.

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<sup>1</sup> The pleadings of parties including WOW, the Solar Alliance, the Solar Initiative, ISEA, IREC, EPLC, RESA, the Attorney General of Illinois, and Ameren-related parties all suffer from this defect. Their filings may be proper argument, but they are not evidence and cannot be relied on as such. In contrast, the FutureGen Alliance appears to acknowledge this and has filed a Supplemental Verification of a witness competent to provide evidence on October 27, 2011 in lieu of its original verification by counsel.

<sup>2</sup> See ComEd Objections (“Obj.”) at 5 (discussing standard for genuine issue of material fact and competent evidence.).

<sup>3</sup> Ill. R. Evid. 801(b), 802; *Schwendener. v. Jupiter Elec. Co.*, 358 Ill.App.3d 65, 79 (1st Dist. 2005) (Supreme Court Rule 191(a) requires that affidavits attesting to facts “shall be made on the personal knowledge of the affiants; \* \* \* shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto.’ In this case, [the] unsworn and unverified letter [attached to the affidavit] constitutes inadmissible hearsay and cannot be relied upon in support of [the] motion for summary judgment.”). No recognized exception (*see* Ill. R. Evid. 803) to the hearsay rule is relevant. *See also* 5 ILCS 100/10-40 (a); 83 Ill. Admin. Code § 200.610 (generally adopting rules of evidence).

<sup>4</sup> *See, e.g.*, IREC Resp. at 4, fn. 6.

<sup>5</sup> IPA Response at 2.

- “[T]he IPA is persuaded by the comments and objections that it is not necessary to include [clean coal solicitation] provision[s] in the 2012 Plan.”<sup>6</sup> ComEd concurs. ComEd is also prepared to participate in a workshop process as the IPA proposes. Although ComEd and the IPA do not see entirely eye to eye on the legal question of IPA’s authority,<sup>7</sup> the conclusion that no such solicitation should be included in this year’s Plan for now renders that disagreement academic.
  
- “After careful consideration of the Parties’ comments and objections, the IPA recommends that the Commission remove the distributed SREC proposal from the current Plan. The IPA remains committed to the inclusion of distributed SRECs in future Plans, but finds that detailed workshops would be beneficial to the development of the issue, prior to the Commission’s consideration of the Plan.”<sup>8</sup> ComEd concurs; the withdrawn plan was neither legal nor in customers’ interests. ComEd stands ready to participate constructively in proposed workshops aimed at developing a lawful, workable, and beneficial proposal for a future plan, potentially including ComEd’s own alternative proposal.

Importantly, these revisions permit the Commission to find, based on the evidence, that these aspects of the Plan proposed by the IPA will provide customers with “adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.”<sup>9</sup> Collectively, they also bring major

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<sup>6</sup> *Id.* at 8.

<sup>7</sup> Compare ComEd Obj. at 13-24 with IPA Resp. at 7-8.

<sup>8</sup> IPA Resp. at 11.

<sup>9</sup> 20 ILCS 3855/1-5(1); 220 ILCS 5-16-111.5(d)(4).

portions of the Plan into compliance with the Public Utilities Act (“PUA”) and the Illinois Power Agency Act (“IPA Act”).

## **II. THE IPA’S PROPOSAL CONCERNING THE IDENTIFICATION OF RENEWABLE FACILITIES SHOULD BE APPROVED**

In its Objections, ComEd proposed that the IPA, Staff, the Procurement Administrator, and the Procurement Monitor jointly compile and make a list of generation sources qualifying as renewable resources under Section 1-10 of the IPA Act available in advance to potential bidders and utilities.<sup>10</sup> ComEd argued that providing the market with a definitive list of eligible renewable resources applicable to utility procurements will decrease uncertainty for all participants in the procurement process and increase the likelihood that it will lead to the lowest total cost over time.

In response, the IPA acknowledges that the “list of renewable resources is required to be updated” and that “[t]he IPA updates the list of renewable energy resource providers on a recurring basis, as new facilities are developed.” However, the IPA argues that the law does not require the IPA to update that list specifically “for the purposes of the procurement plan” and, therefore, asks the Commission to reject any “specified time or criteria for updating the list of suppliers.”<sup>11</sup> Staff “agrees that it would be beneficial for the IPA to provide participants ... with a definitive list of ... qualifying renewable resources ...,” but ultimately opposes ComEd’s proposal based on concerns over practicality and how generators under development would be addressed. No doubt because of the benefits that a workable list could offer, Staff, however,

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<sup>10</sup> ComEd Obj. at 31-3.

<sup>11</sup> All quotations are from IPA Resp. at 16.

concludes that the “IPA take under advisement the general concept of producing a list of eligible (and/or ineligible) facilities in advance of issuing its renewable energy resource RFPs.”<sup>12</sup>

ComEd appreciates the concerns of Staff and IPA and, after careful consideration, believes its proposal can easily be amended to fully address each of those concerns, while still providing participants with the vast majority of the benefits of market certainty. Therefore, ComEd suggests that, rather than establishing a separate process or list, the Plan simply make clear that all parties and participants can rely on the most recent list of qualifying renewable resource generators prepared by the IPA for use in the parallel ARES process, *i.e.*, the current IPA list as of the date the RECs are delivered, for generators existing as of the date of that list. Because no additional processes or updates would be required, this modification addresses both the IPA’s concern about additional updates and Staff’s concern about additional work being imposed on parties. Further, because the list would only be definitive as to generators in operation on the date when the list is issued, Staff’s concern about generators “on the drawing board” or in the process of construction is eliminated.

The only remaining objection is Staff’s assertion that there are differences between qualifying renewable resources for ARES and utilities that would impede use of this list in the utility context. ComEd believes Staff concern is overstated and appears to be based, in part, on a misreading of Section 16-115D of the PUA and, in part, on a misunderstanding of data used to prepare that list. With respect to the definition of renewable resource, Section 16-115D(a)(1) explicitly adopts for ARES the identical definition of renewable energy resources applicable to utilities, stating simply: “The definition of renewable energy resources contained in Section 1-10 of the Illinois Power Agency Act [*i.e.*, the utilities’ definition] applies to all renewable energy

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<sup>12</sup> Staff Resp. at 4.

resources required to be procured by alternative retail electric suppliers.”<sup>13</sup> It is true that ARES operating under Section 16-115D are not subject to the locational preferences specified in Section 1-75(c)(3) of the IPA Act,<sup>14</sup> but that means that the list already prepared for ARES must include all renewable generators, without regard to the locational preference. Since this list itself contains the “location of generation,”<sup>15</sup> it is no obstacle to use it for utilities, too. Utilities and participants will simply have to check that the resource is both listed as qualifying and listed as being in a permissible location.

Finally, ComEd notes that Staff appears to misread the PUA itself in asserting that “Section 16-115D sets forth the additional requirement [for ARES] that the resource must be located within Illinois and/or the PJM and MISO footprints.”<sup>16</sup> Section 16-115D, however, contains no such requirement. It appears, rather, that the genesis of this concern is Section 16-115D’s requirements that “renewable energy resources shall be independently verified through the PJM Environmental Information System Generation Attribute Tracking System (PJM-GATS) or the Midwest Renewable Energy Tracking System (M-RETS),” and that the IPA provide to PJM-GATS, M-RETS and ARES “information necessary to identify resources located in Illinois, within states that adjoin Illinois or within portions of the PJM and MISO footprint in the United States that qualify under the definition of renewable energy resources in Section 1-10 of the [IPA] Act for compliance with this Section 16-115D.”<sup>17</sup> These provisions do not limit the location of renewable energy resources that can be used to satisfy ARES’ renewable resource obligations; they limit the scope of the IPA’s obligation to pre-identify qualifying resources to

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<sup>13</sup> 220 ILCS 5/16-115D(a)(1).

<sup>14</sup> 220 ILCS 5/16-115D(a)(4).

<sup>15</sup> 220 ILCS 5/16-115D(a)(3).

<sup>16</sup> Staff Response at 3.

<sup>17</sup> 220 ILCS 16-115D(a)(4).

those in these locations.<sup>18</sup> The statutory language does not prohibit use of resources from other locations, nor can such a requirement be inferred from the requirement that such resources be verified through PJM-GATS and M-RETS. Perhaps Staff’s concern also stems from a belief that PJM-GATS and M-RETS systems only include generators in the local area and, therefore, that an ARES list based on those systems may be incomplete. In fact, however, both PJM-GATS and M-RETS do provide for the reporting of renewable energy resources from outside, as well as inside, their respective RTO footprints.<sup>19</sup>

The concern over the potential omission of distant generation is also highly academic and, were it ever to actually materialize, easily remedied. Due to the locational preferences contained in the IPA Act, no supplier has ever won an RFP to supply a renewable resource from a facility located outside of Illinois or an adjoining state. Should a supplier ever win the right to provide such a resource and should the facility that the supplier intends to use to generate that resource not already be reflected on the IPA’s list, this issue created by such a scenario should not be difficult to remedy. The supplier can simply contact the IPA and request to be added to

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<sup>18</sup> Staff’s interpretation of an ARES’ locational requirement appears to have been embedded in the section of Staff’s proposed renewable resources rule for ARES that was adopted by the Commission as 83 Ill. Adm. Code § 455.110(g). This particular language does not appear to have been litigated and this issue does not appear to have been specifically considered by the Commission before adopting that language. *See generally, In re Adoption of 83 Ill. Adm. Code 455*, Docket No. 10-0109, Second Notice Order (June 2, 2010). The Commission is not bound by principles of *res judicata* (*Mississippi River Fuel Corp. v. Illinois Commerce Comm’n*, 1 Ill. 2d 509, 513 (1953)), and is free to correctly apply the law here. In any event, the ARES list contains the location of resources and can be used to identify qualifying renewable resources for utilities as previously explained.

<sup>19</sup> PJM-GATS “tracks the attributes of all generation produced within or traded into the PJM region ....” <http://www.pjm-eis.com/reports-and-news/~media/pjm-eis/reports-news/20100422-gats-5-year-news-release.ashx>. “GATS does not charge generator registration fees, certificate issuance or transfer fees, enabling residential solar owners to use GATS services for little to no cost.” *Id.* M-RETS similarly tracks renewables from beyond its footprint: “Any generator located outside of the geographic footprint of M-RETS owned by a participating utility, or a generator with a contract with a participating utility to deliver energy into the M-RETS footprint may participate in M-RETS. Any other generator may request to participate at an adjusted fee schedule to account for the recovery of start-up costs of the tracking system, and such a request is subject to approval by the M-RETS Board.” Midwest Renewable Energy Tracking System Operating Procedures, Section 2 (Effective April 23, 2010) (<http://www.mrets.net/resources/M-RETS-Operating-Procedures.pdf>).

the list. In fact, a provision can be added to the supply agreement whereby the supplier agrees to supply renewable resources only from facilities identified on the list at the time delivery is made. This should incent the supplier to be sure its facility is on the IPA's list. This proposal takes the burden off of the IPA and places it on the supplier to identify facilities located outside of the PJM or MISO footprint that qualify as renewable energy resources under the IPA Act.

The benefits of using the IPA's list should not be lost because of concern over such a very unlikely and easily remedied worry. In short, the ARES list is a valid, pre-existing, and potentially very useful means of determining whether a generator qualifies as a renewable energy resource. The vast majority of qualifying resources will be the same for both utilities and ARES. Any additional resources can be easily added to the list at the request of the supplier.

WOW, in contrast, objects based largely on the remarkable – and plainly false – assertion that “[u]nlike [for] ARES, there is no restriction on the resources that could qualify for use as a renewable energy resource for utilities.”<sup>20</sup> Section 1-10 of the IPA Act defines the “Renewable energy resources”<sup>21</sup> that can meet utilities’ purchase obligations. Utilities are most certainly restricted to meeting their portfolio requirements through purchases from qualifying resources. Moreover, Section 16-115D(a)(1) expressly incorporates the exact same definition into the ARES’ purchase obligations.<sup>22</sup> WOW’s other objection is just a strawman: ComEd never sought to publicize resource owners’ confidential data, any more than Section 16-115D requires the publication of confidential data with respect to ARES.

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<sup>20</sup> WOW Obj. at 5.

<sup>21</sup> 20 ILCS 3855/1-10.

<sup>22</sup> 220 ILCS 5/16-115D(a)(1).

In sum, as the IPA and Staff recognize, reducing uncertainty as to whether a generator qualifies as a “renewable energy resources” will improve the procurement process and will likely lower costs to participants and, ultimately, prices to customers. ComEd’s revised proposal achieves those benefits while addressing in full the concerns with ComEd’s initial proposal raised by Staff and the IPA.

**III. RESA’S PROPOSAL TO HOLD A WORKSHOP TO CONSIDER MOVING AWAY FROM LADDERED CONTRACTS AND RELATIVE PRICE STABILITY SHOULD BE REJECTED**

RESA asks the Commission to direct the IPA to hold workshops on replacing the proven yearly laddered approach proposed by the IPA and approved by the Commission in every order since the genesis of the IPA. As ComEd noted in its Response, the laddered approach has promoted supplier competition and provided price stability for customers. It is also supported by detailed analysis in the IPA plan. There is no support from any other interested party in this proceeding to move away from it. In fact, the AG specifically rejects it and Staff opposes making such a dramatic change with no evidence of how it would benefit customers.<sup>23</sup> Given the striking absence of both evidence and interest, it would not be productive to hold workshops dedicated to moving away from the laddered approach and therefore the Commission should decline to mandate them.

**IV. THE PROPOSED CONTINGENCY PLAN FOR A REC SUPPLIER DEFAULT SHOULD BE FURTHER CLARIFIED**

In its initial Objections, ComEd noted that the provisions governing contingency responses to a REC supplier default were unclear in several important respects.<sup>24</sup> Staff also

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<sup>23</sup> AG Resp. at 5-6; Staff Resp. at 11.

<sup>24</sup> ComEd Obj. at 34-5.

expressed concerns about the IPA's original REC contingency plan and proposed an alternative.<sup>25</sup> Upon review of that proposal, ComEd and Ameren both concluded that Staff's alternative was superior to the original IPA proposal and recommend it be approved.<sup>26</sup>

The IPA, however, instead proposed a clarification to its original proposal. The IPA's revised language makes it clear that, in the event of default, the utility "will purchase replacement RECs up to the cost of the defaulted contract value."<sup>27</sup> However, the proposal remains unclear about how "the allowable vintage ranges for complying RECs would be extended."<sup>28</sup> Nor does it make clear what happens if the collateral is insufficient. The IPA also does not come to grips with Ameren's concerns about the proposal's legality. While ComEd takes no position on that argument, ComEd does believe that all other things being equal, proposals raising serious legal challenges should be avoided.

For these reasons, ComEd urges the Commission to approve the Staff alternative.<sup>29</sup>

#### **V. THE COMMISSION SHOULD ADOPT A LAWFUL PORTFOLIO REBALANCING APPROACH**

As in past years, the IPA proposed a means to rebalance portfolios in the event that specific events occur, especially unforeseen municipal aggregation.<sup>30</sup> Staff's Objection suggested instead that rebalancing be authorized when "consensus is reached" between the IPA, Staff, the Procurement Monitor, the Procurement Administrator, and the utility.<sup>31</sup> ComEd

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<sup>25</sup> Staff Obj. at 34-36.

<sup>26</sup> ComEd Resp. at 22-23; Ameren Resp. at 5-6.

<sup>27</sup> IPA Resp. at 13.

<sup>28</sup> Plan at 57.

<sup>29</sup> See Staff Obj. at 35-6.

<sup>30</sup> Plan at 38, 47.

<sup>31</sup> Staff Obj. at 33.

Response pointed out that this Staff’s proposal was likely inconsistent with the PUA’s requirement that the *Commission* approve the forecast and the Plan, including the amount of energy to be procured. As ComEd noted, the PUA then gives stakeholders an opportunity to have input into the forecast and Plan, but clearly and unavoidably mandates the Commission itself “approve the procurement plan, *including expressly the forecast* used in the procurement plan ....”<sup>32</sup>

Ameren accepts Staff’s proposal, but, in contrast, provides no analysis of whether allowing parties other than the Commission to modify the forecast -- based on their own “consensus” and without limitation to a Commission-defined circumstance (*e.g.*, excess municipal aggregation) -- constitutes an unlawful delegation of discretion. That is clearly a needless legal risk to which the Commission should not expose this critical process. The IPA’s original proposal, which identified the circumstances under which rebalancing would occur, is the safest and best course.

In response to another suggestion from Ameren, the IPA also now offers to revise that plan by having two rebalancing events, one before and one after the procurement event. ComEd believes this is unnecessary and needlessly complex, especially given that the Plan already calls on ComEd to submit an updated load forecast.<sup>33</sup> If significant unforeseen and unforecast changes in load requiring rebalancing do occur, there is no reason why they cannot be addressed by a single rebalancing, as provided in past years’ Plans, or why they cannot be addressed in the next annual procurement event. Moreover, it is unclear how a post-event rebalancing would accomplish any purpose. However, if the IPA and Ameren remain concerned about the situation

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<sup>32</sup> 220 ILCS 5/16-111.5(d)(4) (emphasis added).

<sup>33</sup> Plan at 47.

in Ameren's territory and MISO, ComEd suggests at a minimum that the double-rebalance proposal be restricted to Ameren.

Finally, Ameren proposes a wording change to the IPA's original language, deleting the word "energy" from one provision so as to make clear that rebalancing can also include capacity and other products.<sup>34</sup> ComEd has no objection to this clarification.

**VI. THE COMMISSION SHOULD REJECT CONTUNUED EFFORTS TO UNLAWFULLY COMPEL PROCUREMENT OF UNECONOMIC SOLAR RESOURCES**

ComEd supports the procurement of economic solar resources, including distributed solar resources, required by the portfolio standard on a level playing field designed to produce the lowest total energy cost over time. In its Response, ComEd proposed a pathway to enhanced participation by small, distributed solar energy providers that allowed them to compete fairly.<sup>35</sup> Other parties – including IREC, Solar Initiative, ISEA, ELPC, and the Solar Alliance – continue to urge discriminatory subsidies, carve outs, and procurement procedures designed to favor their particular flavor of solar energy at the expense not only of consumers but also of other competitive renewable energy vendors.

The key fact is undisputed, even by small solar boosters: In the words of IREC, "it is true that smaller DG projects do not enjoy the economies of scale of larger or utility-scale projects."<sup>36</sup> Forcing the procurement process to purchase distributed solar resources that are *higher cost than other solar resources* does not help achieve the solar portfolio standards and inescapably increases costs. Attempts to avoid this conclusion by claiming that small solar generators can

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<sup>34</sup> Ameren Resp. at 5.

<sup>35</sup> ComEd Obj. at 30-1.

<sup>36</sup> IREC Resp. at 9.

offer grid benefits<sup>37</sup> on ComEd's or Ameren's grid are unsubstantiated, bear no relationship to the proposal being made, and ignore the fact that grid costs and benefits are outside of the scope of this proceeding, all as discussed below. The bottom line is this: subsidizing some solar vendors at the expense of others is unauthorized, illegal, and will increase procurement costs.

**A. Preferences for Specific Solar Vendors that Permit Higher Cost Resources to Be Procured are Inherently Illegal**

IREC and ELPC both attempt to defend the legality of a carve out or other preference for small solar generators by arguing that a conclusion about its legality is “premature because the details of the program are not yet known.”<sup>38</sup> This argument is both flawed and ironic. It is flawed because the details of a “carve out” or preference are irrelevant as to why such proposals are illegal. The statutes governing this issue is clear, and these proposals are contrary to the established portfolio standards that make no distinction between solar vendors and will necessarily increase costs. This argument is also ironic because if there is insufficient detail in the proposal to determine if it is illegal, *ipso facto* there is insufficient detail to determine if the final procurement plan is legal. In order for a proposal to be included in the approved Plan, it needs to be more than an incomplete concept. The Commission must be able to assess its legality. Absent the ability to determine if it a proposal is legal, the Commission cannot approve it. The place for preliminary discussions of proposals that cannot even meet this hurdle is not in the approved Plan. If workshops do facilitate the development of a lawful plan, the IPA is free to propose it in the next procurement cycle.

The Solar Alliance argues that a preference for distributed solar vendors is legal. Their misreading of the statute, however, is both inconsistent with past Commission decisions and that

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<sup>37</sup> See, e.g., IREC Resp. at 13; ELPC Resp. at 1-2, 4-6.

<sup>38</sup> IREC Resp. at 12 *et seq*; EPLC Resp. at 6-7.

renders the statute self-contradictory. As the Alliance concedes, the Plan is to result in lowest total cost energy. The notion that only the utilities' *implementation* of the Plan need be consistently with that standard completely ignores that the utilities do not control the process or the implementation. It is also inconsistent with the treatment of the standard in every prior procurement order. It also depends on what can, at best, be called selective quotation of the PUA. Section 16-111.5(d)(4) of the PUA does not, in fact, speak to obligations of utilities in implementing the Plan. It speaks directly to the Plan. It states, *in toto*:<sup>39</sup>

The Commission shall *approve the procurement plan*, including expressly the forecast used in the procurement plan, if the Commission determines that *it* 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.

Indeed, other solar advocates—including ISEA – more candidly acknowledge that the Plan itself is, in fact, subject to the “lowest total cost over time” standard.<sup>40</sup>

IREC also argues that a separate procurement process of small solar vendors “effectively advances two of the state’s objectives—procurement of solar and advancement of distributed, behind-the-meter generation resources—through one policy.”<sup>41</sup> Similarly, ELPC asserts that “Without a separate procurement program for distributed solar resources, it is very likely that the Illinois Solar Carve Out will be met entirely with SRECs from large, utility-scale developments.”<sup>42</sup> Both seem to assume that promoting small solar vendors *that cannot otherwise compete* is in and of itself a state policy goal. Of course, IREC and ELPC must acknowledge

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<sup>39</sup> 220 ILCS 5/ 16-111.5(d)(4) (emphasis added).

<sup>40</sup> ISEA Resp. at 1 (“The Commission should approve IPA’s currently proposed procurement plan with respect to solar energy in accordance with 220 ILCS 5/16-111.5(d)(4) ....”).

<sup>41</sup> IREC Resp. at 6.

<sup>42</sup> ELPC Resp. at 3.

that Illinois policy is set by state law. The law is clear. It creates specific renewable portfolio standards. None is created for small solar. Instead a single, unified standard is created for all solar suppliers.<sup>43</sup> Moreover, the renewable portfolio standards are created with a careful eye to price; they include specific consumer protections designed to avoid untoward impact on consumers' costs.<sup>44</sup> The Commission is required to comply with those statutes and not to create other, inconsistent preferences that favor more expensive resources.

The Commission is also required to approve plans with a mix of resources that ensures the lowest total cost over time.<sup>45</sup> That, not any special preference for distributed solar resources, is Illinois' policy. In short, as ISEA candidly recognizes,<sup>46</sup> there is a tension between cost and virtually any renewable energy. Illinois law balances those concerns and resolves them in a defined manner. A carve out that allows higher cost solar vendors to displace lower cost supply – especially lower cost solar energy supply – contravenes that law and that balance.

Advocates of preferences suggest that “Parties that are concerned about the legality and cost-effectiveness of a distributed solar preference in procurement planning can adequately address those concerns in forthcoming program development workshops.”<sup>47</sup> That suggestion is not only ill-conceived (workshops are forums for technical discussion, not to determine legal issues) it is irreconcilably contrary to the law. Moreover, as ComEd stated in its Objections, workshops properly *precede* the presentation of a plan. As the IPA says, they are tools to help develop the proposed plan and should occur “prior to the Commission’s consideration of the

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<sup>43</sup> 20 ILCS 3855/1-75(c)(1).

<sup>44</sup> 20 ILCS 3855/1-75(c)(2).

<sup>45</sup> 220 ILCS 5/16-111.5(d)(4).

<sup>46</sup> ISEA Resp. at 7.

<sup>47</sup> IREC Resp. at 2.

Plan.”<sup>48</sup> By contrast, Illinois law does not permit a procurement plan to leave key portions of the plan unformed and to call on subsequent workshops to solidify it. The substance of the plan that is adopted must be presented in this process and reviewed and approved by the Commission based on the record here.

Finally, IREC proposes<sup>49</sup> to turn the workshops into a process of, in effect, deciding controversies by allowing the IPA to file a report, in essence, telling the Commission how facts are to be resolved. There is no authority for such a process. While the IPA will incorporate its conclusions in the next procurement plan, workshops are a voluntary means to reach consensus. They are not a means of ruling on issues where no consensus is reached.

**B. Arguments Concerning the Cost of Solar Energy Do Not Support a Preference for Small Solar Facilities**

The parties supporting a small solar preference spend pages arguing a variety of alleged benefits of solar power in general. These arguments are irrelevant. The portfolio standard for solar energy is established and nothing in the Plan either decreases or can increase that standard. The question posed by the IPA’s original proposal was a different question: namely, should a particular sub-group of solar vendors receive a preference, even over other renewable and solar resources. As the unrefuted evidence shows, the most cost-effective way to get any such benefits is not to run a separate procurement for the higher cost solar suppliers.

For example, IREC<sup>50</sup> claims that solar energy can reduce procurement costs, including by eliminating costs of supposed “unnecessary redundancy in generation capacity” (the existence of which is not substantiated). As an argument for a preference, this is doubletalk. If there were

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<sup>48</sup> IPA Resp. at 11.

<sup>49</sup> IREC Resp. at 11.

<sup>50</sup> IREC Resp. at 4.

truly capacity cost benefits, they would accrue to solar energy suppliers generally (not just distributed solar operators). Moreover, they would be reflected in solar energy vendors' ability to bid into the RFP process, either on a stand-alone basis or as part of a composite bid assembled from a least cost resource mix. There would be no reason for subsidies, let alone a specific carve out for Solar DG. The same is true for the claims made by ISEA that solar energy is not expensive.<sup>51</sup> If and when the costs of distributed solar generation fall to competitive levels, it will be able to compete with other solar resources.

**C. Supposed “Grid Benefits” Do Not Justify Procurement Preferences for Distributed Solar Facilities**

IREC,<sup>52</sup> the Solar Alliance,<sup>53</sup> and ELPC<sup>54</sup> all argue that distributed solar generation can create grid benefits. There is no evidence that *any* grid benefits will result from the facilities that would be subsidized by the proposals here, nor is the procurement process a proper venue for considering or addressing delivery system benefits.

Factually, none of the assertions made on this subject have any relevance to the specific distributed solar proposal here (which is not geographically targeted), or to the costs and circumstances existing on ComEd's or Ameren's grids. When ComEd has looked at data for how the installation of distributed solar facilities has impacted demand at the distribution level, the typical period effect is too tiny to affect distribution design or operation, even if the typical effect could be relied upon at the distribution facility level, which it cannot. In contrast, the data that they point to is not specific to ComEd's (or Ameren's) system, nor it is even admissible

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<sup>51</sup> ISEA Resp. at 5-6.

<sup>52</sup> IREC Resp. at 5-7.

<sup>53</sup> Solar Alliance Resp, at 7-8.

<sup>54</sup> ELPC Resp. at 4-5.

evidence that has been subject to discovery or other procedural safeguards. For example, IREC's discussion of the California pilot study,<sup>55</sup> is double-hearsay recitation of attached hearsay documents prepared for ongoing litigation in another state. The same is true of the Solar Alliance's reliance on two selected articles relating to other solar programs on other systems in other states.<sup>56</sup>

IREC also asks that "the Commission consider objections to the distributed SREC proposal in the context of the proposed program size. For 2012, this would amount to the procurement of the equivalent of approximately 3 MW of distributed solar capacity."<sup>57</sup> IREC, in essence, is asking the Commission to look the other way at an illegal and uneconomic procurement plan because it is a *small* illegal and uneconomic plan. Aside from the fact that a program's small size does not render it legal, IREC's argument is also inconsistent with its own presumption that Solar DG has grid benefits. For example, in an attempt to avoid the cost impact of their proposal, IREC emphasizes that the "the distributed SRECs [they propose] for 2012 would represent merely 3 MW of capacity in 2012 and increase to 10 MW in 2013."<sup>58</sup> Even if there were any such benefits (which ComEd doubts), there would have to be enough Solar DG out there to change grid power flows and planning assumptions before they could occur. Any such effects would not begin to happen with 3 MW of capacity.

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<sup>55</sup> IREC Resp. at 5-7. IREC's unilateral assertion that a California Staff methodology was "vetted" in California hardly suggests Illinois should just "buy in." Rather, the lengthy California process illustrates the fact that trying to measure the grid impacts of distributed generation is challenging, subject to dispute, and must be tailored to the conditions applicable to the grid and power market being studied. It is also noteworthy that the "E3 Methodology" (*see* IREC Resp. at 6) has not been approved or "vetted" in Illinois.

<sup>56</sup> *See* Solar Alliance Resp. at 8-9 & fn. 27, 29.

<sup>57</sup> IREC Resp. at 2.

<sup>58</sup> IREC Resp. at 14, quoting in part ELPC Comments on Draft Plan at 12.

Furthermore, the “grid benefit” advocates completely ignore the additional costs that DG imposes on the system. Issues such as controlling harmonics, the impact of bi-directional flows on system protection and relaying, and metering and measurement are not even mentioned, let alone addressed. This is an especially important omission if distributed solar facilities are assumed to be sufficiently pervasive to impact transmission planning decisions, as the advocates claim. Small, distributed solar energy providers also already enjoy substantial delivery benefits, including for example the provision of net metering. IREC ignores these costs, too. Neither is the concern recently expressed by the Commission that utilities not rely on resources outside of their control to meet customer needs;<sup>59</sup> it is one thing to purchase and use solar generated power. It is quite another to design one’s system so that the ability to serve customers is dependent on other customers’ decisions with respect to their distributed generation.

Aside from all these factual deficiencies, there is an equally fundamental legal reason why supposed grid benefits have no place in this procurement process. Illinois is a restructured state where the price of supply resources is kept separate from the price of delivery in order to assure a fair competitive market. Aside from being unwarranted factually, the notion that the Plan can bestow on small solar participants “an additional time of delivery and locational benefit ‘adder’ for distributed solar generators”<sup>60</sup> ignores entirely that delivery costs and rates are not subject to this proceeding. The IPA is tasked with selecting from among prospective vendors

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<sup>59</sup> In *Commonwealth Edison Co.*, Docket No. 10-0467 (May 24, 2011) at 273, the Commission addressed a circumstance in which the operation of ComEd’s delivery system relied on customers facilities. The Commission observed that this made ComEd “dependent upon entities over which it has no control,” and concluded that “This condition has the obvious potential to harm the general public, if it has not already done so in the past.” The same risk is present here to the extent the delivery system would be planned in built in reliance on a customer owned and operated small solar facility.

<sup>60</sup> See, .e.g., IREC Resp. at 7.

based solely on their competitive price,<sup>61</sup> not of an alleged benefit that, even if proven, would require specific analysis of the operations of the transmission and distribution system at specific locations. In short, the question of grid benefits if any – and of grid costs – associated with distributed solar facilities is an issue for delivery rate design.

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In sum, ComEd believes that small solar providers should participate in a unified procurement process that secures solar resources at the lowest cost. ComEd believes there are ways to address structural concerns small generators may have without creating unlawful carve outs and programs that increase customers costs. ComEd stands ready to participate if the IPA convenes such workshops to discuss such options in the future. ComEd also believes that, to the extent parties believe there are grid benefits to distributed resources in general, those grid benefits must be substantiated, quantified, and addressed in the context of setting delivery services rates.

**VII. THE COMMISSION SHOULD APPROVE THE IPA’S DECISION TO NOT INCLUDE A CLEAN COAL PROCUREMENT IN THIS YEAR’S PLAN**

**A. The Commission Should Approve the Revised IPA Proposal**

In response to the objections of ComEd, Staff, and others, the IPA has determined “that it is not necessary to include [clean coal solicitation] provision[s] in the 2012 Plan.”<sup>62</sup> The IPA proposes forward-looking workshops instead. ComEd concurs and is prepared to participate in those workshops. The Commission should approve this approach. It is both lawful and sensible.

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<sup>61</sup> 220 ILCS 5/16-111.5(e)(2).

<sup>62</sup> *Id.* at 8.

**B. Response to the FutureGen Alliance**

The only party filing a response supporting the now-superseded original clean coal proposal was the FutureGen Alliance. That response lacks merit.

**1. There is No Current Requirement for the Plan to Include Electricity Generated by Clean Coal**

The FutureGen Alliance’s response begins with the claim that “Illinois law does not support the clean coal objectors’ argument that the initial clean coal facility must precede other clean coal plants.”<sup>63</sup> The referenced “argument” is a strawman; it is neither ComEd’s argument nor the basis of the IPA’s decision to remove the clean coal section from the proposed plan.

What ComEd actually pointed out is that, outside of specific limited circumstances relating to the initial clean coal facility, the IPA Act contains no *requirement* to procure electricity generated by a clean coal facility.<sup>64</sup> The FutureGen Alliance quotes just the first sentence of subsection (d) of Section 1-75 of the IPA Act – which states “procurement plans shall include electricity generated using clean coal” – claiming it constitutes a general “mandate that annual procurement plans include electricity generated by clean coal facilities ....”<sup>65</sup> However, both their quotation and argument take that statement out of context and disregard the rest of the section. Statutory construction is about meaning, context, and sensible construction, not searching for snippets. “The main objective ... is to ascertain and give effect to the intent of the legislature” which is done by “consider[ing] the statutory language as a whole and each provision in relation with every other section.” *Dawn T. v. Hudelson Baptist Children's Home*, 333 Ill.App.3d 445, 448 (5th Dist. 2002); *see also Commonwealth Edison Co. v. Illinois*

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<sup>63</sup> FutureGen Alliance Resp. at 2 (capitalization removed); *see also id.* at 2-3.

<sup>64</sup> ComEd Obj. at 15-18; *see also* ComEd Resp. at. 10-13 and 20 ILCS 3855/1-75(d)(1).

<sup>65</sup> FutureGen Alliance Resp. at 2 (emphasis in original); *see also id.* at 3.

*Commerce Com'n*, 332 Ill.App.3d 1038, 1050 (2<sup>nd</sup> Dist. 2002) (“A statutory provision must not be read in isolation but, rather, must be read in conjunction with other relevant provisions.”). Section 1-75(d)(1) of the IPA Act has a context, as the immediately following references to the mandatory requirements for the “initial clean coal facility” makes clear, and that context informs and explains the scope of the *requirement* that procurement plans include electricity generated by a clean coal facility.

The FutureGen Alliance also refers to the retrofit provisions in Section 1-75(d)(5) of the IPA Act requiring the IPA and the Commission “to consider power purchase agreements ‘covering electricity generated by power plants that were previously owned by Illinois utilities and that have been or will be converted into clean coal facilities[, as defined by Section 1-10 of this Act].’”<sup>66</sup> First, as noted in ComEd’s Response<sup>67</sup> to the FutureGen Alliance’s Objections:

The FutureGen Alliance correctly notes that “the IPA Act expressly directs the IPA, *as part of the procurement planning process*, to consider *sourcing agreements* from qualifying clean coal facilities for utilities and alternative retail electric suppliers required to comply with Section 75(d) of the IPA Act and item 5 of subsection d of Section 16-115 of the Public Utilities Act.” What the Alliance fails to mention is that no *sourcing agreements* were provided by qualifying clean coal facilities during the procurement planning process. Thus, the clean coal proposal is premature at best and the statutory references to the IPA Act’s retrofit clean coal provisions do not provide support for the instant proposal.

Not only were no sourcing agreements submitted as part of the procurement planning process for the 2012 Plan, but the IPA’s original proposal was not limited to retrofit facilities. The FutureGen Alliance asserts that “the repowering and retrofit provision of the IPA Act expressly states that the IPA, during the *procurement process*, shall consider sourcing agreements ‘covering electricity generated by power plants that were previously owned by Illinois utilities

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<sup>66</sup> FutureGen Alliance Resp. at 2 (bracketed material added).

<sup>67</sup> ComEd Resp. at. 12 (citations omitted).

and that have been or will be converted into clean coal facilities”<sup>68</sup> That is untrue. To the contrary, the law refers specifically (not once, but twice) to sourcing agreements submitted as part of the “procurement *planning* process.”<sup>69</sup>

Similarly, the FutureGen Alliance’s reference<sup>70</sup> to Section 16-115(d)(5)(iii) of the Public Utilities Act (“PUA”) is inapposite and establishes no requirement applicable to utilities. Section 16-115(d) establishes clean coal procurement requirements applicable to entities seeking certification as an alternative retail electric supplier (“ARES”).

The FutureGen Alliance also dismisses the prior interpretations of the IPA Act by all parties and the Commission as proving nothing.<sup>71</sup> Putting aside that those arguments are faithful to clear statutory language, the Alliance ignores the fact the General Assembly subsequently amended the IPA Act in 2010 through Public Act 96-1437 without disturbing this construction. Illinois law presumes that the legislature amends a statute with knowledge of decisions interpreting the statute. *Hubble v. Bi-State Development Agency of Illinois-Missouri Metropolitan Dist.*, 238 Ill.2d 262, 273-4 (2010); *see also United Cities Gas Co. v. Illinois Commerce Comm’n*, 163 Ill. 2d 1, 32 (1994) (Finding “legislative intent to permit interest on PGA refunds is presumed” based on recodification of Public Utilities Act following Commission action allowing interest on PGA refunds.) Here, the established view of the legislature’s intent

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<sup>68</sup> FutureGen Alliance Resp. at 4 (emphasis added).

<sup>69</sup> 20 ILCS 3855/1-75(d)(5) (emphasis added) (“During the 2009 *procurement planning process* and thereafter, the Agency and the Commission shall consider sourcing agreements covering electricity generated by power plants that were previously owned by Illinois utilities and that have been or will be converted into clean coal facilities, as defined by Section 1-10 of this Act. Pursuant to such *procurement planning process*, the owners of such facilities may propose to the Agency sourcing agreements with utilities and alternative retail electric suppliers required to comply with subsection (d) of this Section and item (5) of subsection (d) of Section 16-115 of the Public Utilities Act, covering electricity generated by such facilities.”).

<sup>70</sup> FutureGen Alliance Resp. at 4.

<sup>71</sup> FutureGen Alliance Resp. at 5.

that the clean coal standards are discretionary for other than the initial clean coal facility is confirmed by subsequent legislative action.

Finally, the FutureGen Alliance's reliance on a newly penned letter from the Department of Commerce and Economic Opportunity ("DCEO") is meaningless in terms of determining legislative intent, putting aside its status as pure hearsay. DCEO is obviously supportive of the FutureGen project, but nothing in the letter contravenes the arguments of ComEd or others concerning the IPA's original proposal.

For all of these reasons, the IPA's decision to not include a clean coal solicitation in the Plan and instead consider the issue in workshops is prudent and reasonable.

**2. The IPA's Original Clean Coal Proposal Was Required to Meet the Lowest Total Cost Over Time Requirement**

The FutureGen Alliance takes the position that the IPA's original proposal was not required to meet the lowest total cost over time requirement in Section 16-111.5(d)(4) of the PUA.<sup>72</sup> The supposed exemption from this requirement that the FutureGen Alliance claims does not exist in the statute. The FutureGen Alliance refers to the renewable portfolio standard provisions in the IPA Act<sup>73</sup> as support for this claimed exemption. However, the clean coal provisions are not comparable to the renewable portfolio standard relied upon by the FutureGen Alliance. Unlike the specific and statutorily-prescribed renewable portfolio standards, the clean coal standards for other than a qualifying initial clean coal facility are discretionary "goals" rather than mandatory requirements. Because it is only a goal, and not a standard set by statute that must be included in the procurement plan, it is subject to approval by the Commission under

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<sup>72</sup> FutureGen Alliance Resp. at 5-6.

<sup>73</sup> 20 ILCS 3855/1-75(c).

the same standard that governs all other elements of the plan that are not prescribed by statute. This is even clearer in the context of retrofit clean coal facilities. The IPA Act specifically requires Commission consideration of sourcing agreements with such facilities and provides that the Commission “may”, not “shall”, approve such agreements if the agreements do not exceed the benchmarks. If the “cost-effective” standard was the only operative standard, the IPA Act would have stated that the Commission “shall” approve sourcing agreements that do not exceed the benchmarks. But the IPA Act does not state this. Instead, the IPA Act gave the Commission the discretion to approve such agreements or not. The standard that the General Assembly provided to govern the Commission’s consideration of such agreements are the provisions in the PUA governing the approval of the procurement plan.

Similarly, the FutureGen Alliance’s reliance on the legislative findings in Section 16-101A(h) of the PUA is unavailing.<sup>74</sup> This finding says nothing about the standards that must be met for inclusion of clean coal resources in a plan. As to the FutureGen Alliance’s statements regarding costs, they provide no specifics and do not refute Dr. Tolley’s analysis showing that multiple sources of clean coal generation cost estimates – and not just the Tenaska specific cost study<sup>75</sup> – show that clean coal energy is not the lowest cost new generation resource. While the FutureGen Alliance claims that there may be cost offsets, neither the specific costs of the FutureGen project nor the specific offsets that could apply in determining cost-based rates are of record. Indeed, these are the types of terms and conditions that would be disclosed in a sourcing agreement submitted as part of the procurement planning process, but were not submitted here.

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<sup>74</sup> FutureGen Alliance Resp. at. 6.

<sup>75</sup> Nor has the FutureGen Alliance presented cost data showing it will be less expensive than the Tenaska project. And all of these facts, even if presented, would present contested issues of fact requiring a hearing if the Commission were to consider reversing the IPA’s decision to not include a clean coal solicitation in this year’s plan.

3. **The IPA's Original Clean Coal Proposal Did Not Include Sufficient Details**

The FutureGen Alliance also claims that the IPA's original clean coal proposal contains sufficient details.<sup>76</sup> However, even they do not appear to seriously argue that this year's original Plan lacked details, but instead point to details of a long-term renewable resource proposal from a prior procurement process.<sup>77</sup> That old proposal and its details, whether hypothetically appropriate or not, are simply immaterial. They are not part of the original IPA plan, and referring to them only underscores how thin that plan was.<sup>78</sup>

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For all the foregoing reasons, the Commission should accept the IPA's decision to not include a clean coal solicitation in the instant Plan.

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<sup>76</sup> FutureGen Alliance Resp. at 8-10.

<sup>77</sup> *Id.* at 8.

<sup>78</sup> ComEd Obj. at 22.

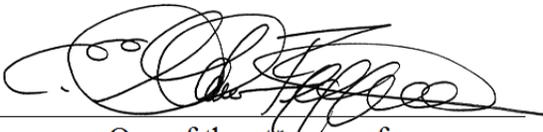
**VIII. CONCLUSION**

For the reasons stated herein, ComEd requests that the Commission modify and, as modified, approve the Plan as set forth in ComEd's Objections, its Response, and this Reply.

Dated: October 28, 2011

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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**VERIFICATION OF DAVID R. ZAHAKAYLO**

STATE OF ILLINOIS        )  
  )        SS.  
COUNTY OF COOK        )

I, David R. Zahakaylo, having been duly sworn, do hereby say and depose under oath based on my personal knowledge as follows:

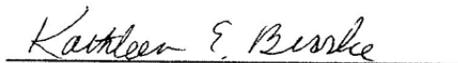
1. I am Director, Resource Adequacy and Procurement Strategy for Commonwealth Edison Company (“ComEd”) and have responsibility for managing power procurement requirements to serve ComEd’s retail and wholesale load obligations.

2. I have reviewed the foregoing “Commonwealth Edison Company’s Verified Reply to Certain Responses to Objections to the IPA’s Procurement Plan.” I swear and affirm that the facts stated therein are true and correct to the best of my knowledge and belief, except that I express no view on the Section thereof entitled “Supposed ‘Grid Benefits’ Do Not Justify Procurement Preferences for Distributed Solar Facilities,” which Section is being attested to by others.

FURTHER AFFIANT SAYETH NOT.

  
David R. Zahakaylo

SUBSCRIBED AND SWORN to before me  
this 28<sup>th</sup> day of October, 2011.



Notary Public





**STEVEN T. NAUMANN****Biographical Summary**

Mr. Naumann received a Bachelor of Science degree in Electric Power Engineering in 1971 and a Master of Engineering degree in Electric Power Engineering in 1972, both from Rensselaer Polytechnic Institute in Troy, New York. He received a J.D. degree from Chicago-Kent College of Law in 1988. Mr. Naumann is a Registered Professional Engineer in the State of Illinois and is licensed to practice law in the State of Illinois.

After Mr. Naumann received his Master's degree in 1972, he served as an engineering officer in the United States Air Force, and was assigned as the Base Electrical Engineer at Reese Air Force Base, Texas. Upon leaving active military duty in 1975, Mr. Naumann joined Commonwealth Edison Company ("ComEd") and has been continuously employed by ComEd until his transfer to his present position at Exelon Corporation, ComEd's ultimate parent.

Mr. Naumann's initial assignment with ComEd was as an Engineer. He was assigned to a six-month "Graduate Development Program" during which he rotated among five engineering assignments. In December 1975, Mr. Naumann was assigned to the Technical Studies Section of the System Planning Department, where his duties involved the performance of stability, dynamic, transient switching, and other detailed studies of the ComEd transmission system. In 1978, he was assigned to the office of the Vice President of Engineering.

Later in 1978, Mr. Naumann was temporarily assigned to the Mid-America Interconnected Network ("MAIN"), first as Assistant Systems Power Coordinator and later as Systems Power Coordinator. In those positions, he was responsible for interconnection and extreme disturbance studies performed by MAIN, as well as monitoring of interconnected operations. As Systems Power Coordinator, he supervised the MAIN Coordination Center, including all engineering and operations functions.

In 1980, Mr. Naumann returned to ComEd as assistant head of the Technical Studies Section. The section was then responsible for dynamic and transient analyses of the ComEd system and surrounding systems as well as reactive or voltage planning of the ComEd transmission system.

In late 1988, Mr. Naumann was assigned as Research Engineer on the staff of the Vice President of Engineering. In 1990, he returned to the System Planning Department, and was placed in charge of the Technical Studies Section. In 1991, he was promoted to Section Engineer, and the duties of the Technical Studies Section were expanded to encompass interconnection planning studies, including ComEd's participation in MAIN studies. In 1993, an Interconnection Planning Section was formed in the System Planning Department, and Mr. Naumann was named Director of that section.

As Interconnection Planning Director, Mr. Naumann supervised the activities of the Interconnection Planning Section that included all interconnection studies, including the ComEd portion of MAIN studies, analysis of the transmission system in response to requests for bulk

power sales, purchases and wheeling, and analysis of impacts of parallel flows on ComEd's transmission system.

As Interconnection Planning Director, and previously as Section Engineer, Mr. Naumann was assigned as the representative of the Northern Illinois subregion of MAIN to the MAIN Transmission Task Force Steering Committee. This Committee was responsible for directing MAIN regional and interregional studies, reviewing such studies, and recommending approval of such studies to the MAIN Engineering Committee. At various times, he has been Chairman of the MAIN Transmission Assessment Studies Group, responsible for conducting seasonal transmission assessment studies, Chairman of the MAIN Future Systems Studies Group, responsible for conducting future interchange and extreme disturbance studies, and a member of the MAIN-ECAR-TVA ("MET") Coordination and Data Exchange Committee, responsible for devising procedures for exchanging information on transfers and identifying actions to take during transmission system emergencies.

In 1995, Mr. Naumann was transferred to the Wholesale Marketing Department as Director of Market Analysis in charge of market analyses in support of ComEd's wholesale sales. While in that position, he also served as a representative on the Real-Time Information Networks "What" Group, which was a group of diverse industry participants that commented to the Federal Energy Regulatory Commission ("FERC" or "Commission") on what information should be posted on the electronic information-sharing system that became known as the OASIS. He also testified at a FERC Technical Conference on Ancillary Services in 1995.

In January 1996, Mr. Naumann was named Director of T&D Regulatory Services. In that position, he directed the work of the T&D Regulatory Services Department. The Department's responsibilities included the preparation and filing of tariffs and service agreements with FERC, administering those tariffs, and providing cost justifications where required. As part of administering ComEd's Open Access Transmission Tariff ("OATT"), Mr. Naumann was responsible for determining the propriety of rate discounts for transmission services and interpreting the tariff. Mr. Naumann testified before FERC on independent system operator ("ISO") issues in April 1998 and June 1998. He also served as a member of the NERC Interconnected Operations Services Working Group that issued a report in March 1997 providing additional technical information on ancillary services and other services needed for reliability of the interconnected system. In addition, he was a member of the Commercial Practices Working Group ("CPWG") that provided an industry forum to discuss and resolve business practice issues related to the operation of bulk power electric systems in North America. Mr. Naumann later was the MAIN representative on the Interim Market Interface Committee, the CPWG's successor and the IOU representative on the Market Interface Committee.

In October 1999, Mr. Naumann was promoted to Vice President, Transmission Services. In that position, he had executive responsibility for transmission service provided by ComEd to third parties, including the interconnection of new generation to the ComEd transmission system, and had executive responsibilities for ISO and later regional transmission organization ("RTO") development.

In February 2003, Mr. Naumann assumed his present position as Vice President, Wholesale Market Development of Exelon Corporation. He has executive responsibilities for

development of markets nationwide, senior interface with NERC and is one of a team of Exelon executives involved in development of RTO policy, including the integration of ComEd into the PJM Interconnection, L.L.C. (“PJM”), completed in May 2004. Mr. Naumann directs the development of Exelon policy on numerous market issues related to PJM, Midwest Independent Transmission System Operator, Inc. (“MISO”), and the Southwest Power Pool, and in other areas of the country. These issues include questions of capacity requirements, generation retirements, station power, ancillary services markets, reliability must run rules, reactive power compensation, transmission cost allocation and general market structure and development. Mr. Naumann also directs the development of policy issues involving NERC. Mr. Naumann previously served as Vice Chairman of the MAIN Board of Directors and was on the Interim Board of Directors of ReliabilityFirst Corporation. He served for a number of years on the NERC Stakeholders Committee, was one of the representatives for the Investor-owned Utility Sector on the NERC Member Representatives Committee (MRC). During 2008 he was Vice Chairman of the MRC and served as Chairman through February 2010.

## **Testimony**

### **Before Congress**

Senate Committee on Homeland Security & Governmental Affairs, “Protecting Cyberspace as a National Asset: Comprehensive Legislation for the 21<sup>st</sup> Century,” June 15, 2010

House Subcommittee on Emerging Threats, Cybersecurity, and Science and Technology, Committee on Homeland Security, “Securing the Modern Electric Grid from Physical and Cyber Attacks,” July 21, 2009

House Subcommittee on Energy and Air Quality, Committee on Energy and Commerce, “Protecting the Electric Grid from Cyber-Security Threats,” Sept. 11, 2008

### **Before the Federal Energy Regulatory Commission**

*Commonwealth Edison Company*, Docket Nos. ER93-777-000, ER95-1545-000, ER95-1539-000, and ER95-371-000.

*Promoting Wholesale Competition Through Open Access, Non-discriminatory Transmission Services by Public Utilities*, Ancillary Services Technical Conference (Oct. 26, 1995)

*IES Utilities, Inc.*, Docket Nos. EC96-13-000, ER96-1236-000, and ER96-2560-000 (Answering and Rebuttal Testimony)

*Midwest Independent Transmission System Operator, Inc.*, Docket Nos. ER98-1438-000, EC98-24-000 (Direct and Rebuttal Testimony)

*Inquiry Concerning the Commission’s Policy on Independent System Operators*, Docket Nos. PL98-5-000 (Apr. 16, 1998), PL98-5-004 (June 4, 1998)

*American Electric Power Co. and Central and South West Corp.*, Docket Nos. EC98-40-000, ER98-2770-000 and ER98-2786-000 (withdrawn)

*Commonwealth Edison Company*, Docket No. ER01-2992-000 (Direct Testimony)

*Commonwealth Edison Co. and PECO Energy Company*, Docket No. EC00-26-000 (Direct Testimony)

*Electricity Market Design and Structure*, Docket No. RM01-12-000, *RTO Markets and Design: Optional RTO Markets* (Oct. 15, 2001), *Transmission Rights and Financial Rights* (Feb. 5, 2002)

*Midwest Generation EME, LLC*, Docket Nos. ER04-190-000, EL04-22-000 (Affidavit)

*The New PJM Companies*, Docket No. ER03-262-009 (Direct and Rebuttal Testimony)

*Joint Boards on Security Constrained Economic Dispatch*, Docket No. AD05-13-000 (PJM/MISO, Nov. 21, 2005)

*PJM Interconnection L.L.C.*, Docket No. EL05-121-000 (Direct and Cross-Answering Testimony)

*Midwest Independent Transmission System Operator, Inc.*, Docket Nos. ER05-6, EL04-135, EL02-111, EL03-212 (Answering Testimony)

*PJM Interconnection, L.L.C.*, Docket Nos. ER05-1410-000, EL05-148-000 (Technical Conference on RPM, June 8, 2006)

*OATT Reform Technical Conference*, Docket Nos. RM05-17-000, RM05-25-000 (Oct. 12, 2006)

*PJM Interconnection, L.L.C.*, Docket Nos. ER06-456-006, ER06-954-002, ER06-1271-001, ER07-424-000, EL07-57-000 (Cross Answering Testimony)

*Midwest Independent Transmission System Operator, Inc.*, Docket No. ER08-637-000, ER08-637-001, ER08-637-004, ER08-637-005 (Technical Conference on Market Coordination Service)

*PJM Interconnection L.L.C.*, Docket No. EL05-121-006 (Direct and Reply Affidavits)

*Reliability Monitoring, Enforcement and Compliance Issues*, Docket No. AD11-1 (Technical Conference, Nov. 18, 2010)

### **Before the U.S. Department of Energy**

Pre-Congestion Study Regional Workshops for the 2009 National Electric Congestion Study (Sept. 17, 2008), transcript at [http://www.congestion09.anl.gov/documents/docs/Transcript\\_Pre\\_2009\\_Congestion\\_Study\\_Chicago.pdf](http://www.congestion09.anl.gov/documents/docs/Transcript_Pre_2009_Congestion_Study_Chicago.pdf)

**Before the Illinois Commerce Commission**

Docket No. 95-0314/0338

*Rulemaking proceeding to implement Section 16-119A(a) of the Public Utilities Act regarding standards of conduct and Rulemaking proceeding to implement Section 16-119A(b) of the Public Utilities Act regarding functional separation between generation services and delivery services of Illinois electric utilities, Docket Nos. 98-0147/0148*

Docket No. 98-0649 (ARES Certification)

*Investigation concerning certain tariff provisions proposed under Section 16-108 of the Public Utilities Act and related issues, Docket No. 98-0680 (Rebuttal Testimony)*

*Commonwealth Edison Company, Application of Commonwealth Edison Company, for a Certificate of Public Convenience and Necessity, under Section 8-406 of the Illinois Public Utilities Act to construct, operate and maintain a new electric transmission line in Will County, Illinois Docket No. 98-0745 (Rebuttal Testimony)*

*Central Illinois Light Company, Central Illinois Public Service Company, Commonwealth Edison Company, Illinois Power Company, and Union Electric Company, Docket No. 98-0818 (Prepared Testimony)*

*Commonwealth Edison Company, Petition for Order Concerning Delineation of Transmission and Local Distribution Facilities, Docket No. 98-0894 (Direct and Rebuttal Testimony)*

*Commonwealth Edison Company, Petition for approval of delivery services tariffs and delivery services implementation plan, and for approval of certain other amendments and additions to its rates, terms, and conditions, Docket No. 99-0117 (Direct, Rebuttal and Surrebuttal Testimony)*

*South Beloit Water, Gas & Electric Company, Delivery Services Implementation Plan submitted pursuant to Section 16-105 of the Illinois Public Utilities Act, Docket Nos. 99-0124, 99-0125, 99-0132, 99-0133 (Direct Testimony)*

*Commonwealth Edison Company, Petition for expedited approval of implementation of a market-based alternative tariff, to become effective on or before May 1, 2000, pursuant to Article IX and Section 16-112 of the Public Utilities Act, Docket No. 00-0259 (Rebuttal Testimony)*

*Commonwealth Edison Company, Petition for approval of delivery services tariffs and tariff revisions and residential delivery services implementation plan, and for approval of certain other amendments and additions to its rates, terms, and conditions, Docket No. 01-0423 (Rebuttal and Surrebuttal Testimony)*

*Commonwealth Edison Company, Proposed tariffs filed pursuant to Article IX of the Public Utilities Act defining a competitive supply procurement process and, pursuant to Section 16-112(a) of the Act, establishing a market value methodology to be effective post-2006; providing for Power Purchase Options and for recovery of transmission charges post-2006; and enabling subsequent restructuring of rates and unbundling of prices for bundled service pursuant to*

*Sections 16-109A and 16-111(a) of the Act, Docket No. 05-0159 (Direct, Rebuttal and Surrebuttal Testimony)*

*Investigation of Rider CPP of Commonwealth Edison Company, and Rider MV of Central Illinois Light Company d/b/a AmerenCILCO, of Central Illinois Public Service Company d/b/a AmerenCIPS, and of Illinois Power Company d/b/a AmerenIP, pursuant to Commission Orders regarding the Illinois Auction, Docket No. 06-0800 (Rebuttal Testimony)*

*Commonwealth Edison Company, Petition for Approval of Initial Procurement Plan, Docket No. 07-0528 (Affidavit)*

Electric Policy Meeting, *FERC's Standard Market Design Hearing* (Oct. 15, 2002)

### **Before the Public Service Commission of Wisconsin**

Docket Nos. 6630-UM-100, 4420-UM-101 (Primergy Merger)

### **Other**

Zoning Board of Appeals of McHenry Co. (Special Use Permit re: Reliant IPP)

### **Publications and Presentations**

Naumann, S.T., *NERC, Reliability Enforcement*, Presented at the Skadden Sixth Annual Enforcement and Compliance Conference (Feb. 2, 2011)

Naumann, S.T., *Reliability Moving Forward, Perspective View on Where We Go From Here*, Presented at the Energy Bar Association, Reliability Primer for Lawyers and Energy Professionals (April 28, 2010)

Naumann, S.T., *NERC, Thoughts on the Previous Year*, Presented at the Skadden 5<sup>th</sup> Annual Enforcement and Compliance Conference (Feb. 2, 2010)

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