**GENERAL ASSEMBLY**
STATE OF ILLLINOIS

December 27, 2011

Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Re: ICC Proceeding No. 11-0710

To Whom It May Concern:

The undersigned are the principal Senate and House sponsors of five separate pieces of legislation dealing with the Chicago Clean Energy, LLC ("Chicago Clean Energy") project, each of which passed both chambers of the Illinois General Assembly by super-majority vote margins:

*(i)* SB 52, now P.A. 96-0781, which provided for a $10 million grant from the Coal Development Bond Fund to help support a detailed economic analysis—or Front-End Engineering & Design study, or "FEED study"—of the Chicago Clean Energy project, with such FEED study further reviewed and validated by the Illinois Power Agency ("IPA") and its outside experts;

*(ii)* SB 658, now P.A. 96-0784, which formally appropriated the FEED study grant monies;

*(iii)* SB 3388, the original Chicago Clean Energy enabling legislation that was passed in the final days of the 96th General Assembly after many months of detailed review and negotiation among legislators, staff and stakeholders, and following lengthy committee hearings, but vetoed by the Governor;

*(iv)* SB 1533, now P.A. 97-0096, which made changes to the original Chicago Clean Energy enabling legislation to satisfy concerns of the Governor, and was the subject of a well-attended public bill signing by the Governor at the Chicago Clean Energy project site; and

*(v)* HB 691, now P.A. 97-0630, which clarified and slightly expanded the limited role of the Illinois Commerce Commission ("ICC") in developing final sourcing agreements for the Chicago Clean Energy project after IPA included two early termination provisions in its final draft sourcing agreements that conflicted with the legislative intent surrounding P.A. 97-0096, the Chicago Clean Energy enabling statute.

The undersigned are intimately familiar with the very detailed review undertaken by the Illinois General Assembly with respect to the Chicago Clean Energy project, and we are both intimately aware of the legislative history and intent of both P.A. 97-0096 and P.A. 97-0630, two statutes that are central to the above-referenced ICC proceeding. We submit this letter, to be included as an attachment to Intervenors' Brief on Exceptions to Proposed Order, to articulate the legislatively intended limited role of the ICC in developing final sourcing agreements for the Chicago Clean Energy project. We respectfully submit that the views shared by the Intervenors—which include the Illinois AFL-CIO, Building Trades Council for Chicago and Cook County, Hispanic American Construction Industry Council ("HACIA"), Illinois Coal Association, Mechanical Contractors Association, Illinois Faith Based Association, Pastors United for Change, Calumet Area Industrial Commission, South Chicago Chamber of Commerce, Hegewisch Chamber of Commerce, and Southeast Chamber of Commerce—are consistent with the legislative intent of P.A. 97-0096 and P.A. 97-0630 as we well know it.

There are three general points we wish to share regarding the legislative intent underlying P.A. 97-0096 and P.A. 97-0630:

*(i)* the legislature *did indeed intend* that the ICC would have a very limited role in developing final sourcing agreements for the Chicago Clean Energy project—this limited ICC role was no mistake, and it was never intended that the ICC would "re-litigate" matters previously decided by the IPA;

*(ii)* these two statutes reflect a legislatively negotiated deal construct, developed during the course of three full years of legislative work and informed by detailed economic analysis, in which the interests of consumers, the project developer, and other stakeholders were carefully balanced—no single deal term can be accurately viewed in isolation, since the deal terms in their entirety represent a complex and intended set of trade-offs; and

*(iii)* after careful review, the legislature has determined that moving the Chicago Clean Energy project forward is in the best interest of the State of Illinois—in performing their assigned roles in the development of final sourcing agreements, each of the involved state agencies (including the ICC) should take care to preserve the financeability and financial viability of the Chicago Clean Energy project.

Regarding the first point, the legislature intentionally assigned three state agencies specific, non-overlapping roles in the development of the final Chicago Clean Energy sourcing agreements. The IPA, with its expertise in energy procurement (and the intimate familiarity with the project of its former director, who reviewed and validated the $10 million facility cost report and actively participated in the legislative drafting as a stakeholder), was to develop the base contract document (formally known as the "final draft sourcing agreement") following interaction with the project developer and involved utilities and by a strict statutory deadline. The Capital Development Board ("CDB"), with its expertise in overseeing construction projects, was to confirm the capital and operations and maintenance ("O&M") cost numbers to be inserted into the IPA base

contract document. The ICC, with its expertise in assigning reasonable rates of return, was to insert the appropriate rate of return number into the IPA base contract document. Consistent with its determination where each set of decisions would best be made, the legislature intentionally assigned each agency its respective role in the development of the Chicago Clean Energy sourcing agreements. It was intended that the ICC would not "re-litigate" the work of either the Illinois Power Agency ("IPA") or the CDB. With the passage and enactment of P.A. 97-0630, the role of the ICC was enlarged only to direct the ICC to: *(i)* remove from the IPA base contract document the two early termination provisions that are unrelated to Chicago Clean Energy non-performance; and *(ii)* correct typographical and scrivener's errors.

Regarding the second point, it is critical to view the Chicago Clean Energy enabling statute in its entirety, as a complex set of trade-offs designed to balance a variety of competing interests, if one is to understand the legislative intent underlying any single portion of that law. Throughout the development of P.A. 97-0096 (and the predecessor bill, SB 3388), it was an important legislative goal to assure Chicago Clean Energy of sufficient cost recovery of approved capital and O&M costs to make the project financeable and viable. In turn, consumers were given the benefit of a significant "consumer protection reserve account" which is continuously replenished with 50 percent of additional product revenues from the Chicago Clean Energy facility (formally called "incremental revenues"), and a guarantee (from the facility, not its parent company) of consumer savings of at least $100 million, among other things. In that broad context, it becomes easier to understand that the legislature intended for the Chicago Clean Energy facility to fully recover its capital and O&M costs from the purchasing utilities under the terms of the sourcing agreement and not through the sales of ancillary revenues.

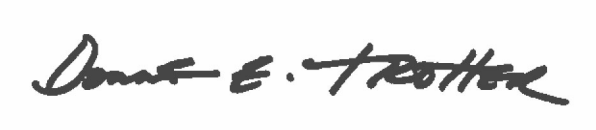
Regarding the third point, as reflected in repeated super-majority votes, the General Assembly has determined that moving the Chicago Clean Energy project forward is in the best interest of the State of Illinois. Among other things, the Chicago Clean Energy project will: *(i)* create thousands of much-needed jobs, and billions of dollars of much-needed economic activity, in our state—presently Illinois imports all the natural gas annually used by its citizens, mostly from the Gulf Coast states and Canada, and the Chicago Clean Energy project represents an opportunity to satisfy a portion of those annual needs through SNG production here in Illinois; *(ii)* utilize an abundant Illinois natural resource in an environmentally friendly way and help commercialize a "green energy" technology that may assist our nation in becoming more energy independent; *(iii)* produce over a billion dollars in much-needed state and local tax revenue to help fund important government services; *(iv)* remediate a 140 acre brownfield site that currently is a blighted area in the community; and *(v)* provide consumers with some price stability in the volatile natural gas market and, according to the facility cost report as validated by IPA, likely save Illinois natural gas consumers money over the Chicago Clean Energy project term. Given that the Chicago Clean Energy project is one that the Illinois General Assembly repeatedly has endorsed to move forward, it is the legislative intent that the state agencies that are assigned roles in developing the Chicago

Clean Energy sourcing agreements do so in a manner that preserves the financeability and viability of the project. Any request of any party to insert a "poison pill" that would thwart the financing or viability of the Chicago Clean Energy project should be rejected pursuant to the legislative intent underlying P.A. 97-0096 and P.A. 97-0630.

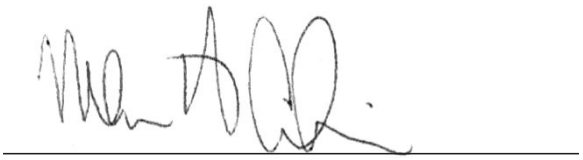
To be clear, after several years of detailed review, analysis, discussion and debate, the Illinois General Assembly and the Governor made a *public policy decision* to move forward with the Chicago Clean Energy project. No state agency—not the IPA, CDB or ICC—was asked to reevaluate the merits of the Chicago Clean Energy project or to revise the economic terms of its statutory deal. Rather, these three state agencies were directed, under strict statutory time frames, to *implement* a public policy already made by the elected representatives of the people of the State of Illinois. Any doubt about this framework should have been erased with the passage and enactment of P.A. 97-0630, which reaffirms the commitment of the General Assembly and Governor to finalize a financeable and viable deal. As currently drafted, the Proposed Order ignores the clear legislative directive that the ICC perform its limited function so as to ensure that the Chicago Clean Energy project will become a reality as a sound, long-term investment in clean energy technology for the State of Illinois. All reworking of statutory deal terms, and any reevaluation of project merits, represent agency actions that are beyond statutory directives and contrary to legislative intent.

We share the foregoing legislative intent observations with a sense of urgency, given that the Proposed Order would, if unchanged and adopted by the full ICC, kill the Chicago Clean Energy project. It is our sincere hope that this Proposed Order will be revised by the ICC, so as to conform to the legislative intent described herein. We sincerely hope that the ICC will act in a manner that preserves this important project for the people of Illinois.

Very truly yours,



Hon. Donne Trotter
Illinois State Senator



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