STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	:	
	:	No. 12-0544
Petition for Approval of the	:	
220 ILCS 5/16-111.5(d) Procurement Plan	:	

COMMONWEALTH EDISON COMPANY'S
VERIFIED OBJECTIONS TO THE PROCUREMENT PLAN
OF THE ILLINOIS POWER AGENCY

TABLE OF CONTENTS

I. CLEAN COAL 2

A. The IPA Must Present a Complete Sourcing Agreement Before it Can Be Approved by the Commission 3

B. The Benchmarks Must be Used to Evaluate the Initial Price and All Subsequent Changes to the Price 5

C. Either All or None of the Illinois Electric Utilities (for whom the IPA procures energy) and RES Should be Required to Execute a Sourcing Agreement with FutureGen 6

D. The Commission May Not Allocate the Output of FutureGen Inconsistently With the Requirements of the IPA Act 8

E. The Proposed Sourcing Agreement Must be Amended to Comply with the IPA Act 8

1. The Utilities' Payment Obligation Under the Sourcing Agreement Must Be Limited to Such Amount as the Utility is Allowed to Recover Through Tariffs 9

2. Any Change to the Contract Price in the Sourcing Agreement Requires Commission Approval Prior to Its Taking Effect 10

3. FutureGen Should be Required to Document and Report on the Capture and Sequestration of Carbon Emissions 10

4. The Sourcing Agreement Cannot be Implemented Through New Tariffs 11

F. Other Provisions of the Sourcing Agreement are Unreasonable and Should be Revised 12

1. Credit Support for ComEd Should Not be Required 12

2. ComEd Should Not Be Required to Support FutureGen's Requests for Approval of Project Costs, the Formula Rate and the Agreement 13

3. The Commission Should Ensure the Rate Cap is Not Exceeded When it Approves the Prices in the Sourcing Agreement. 13

4. The Conditions Precedent Section Must Be Strengthened 13

5. The Contract Price Adjustment Mechanism Should Adjust for Revenues 14

6. Net Energy Sales Should be a Component of the Monthly Contract Price 14

7. The Termination Payment Provisions Need to be Revised 14

8. The Billing Disputes Provision Needs to be Revised 15

9. The Severability Clause Must be Revised to Reflect the Statutory Basis of the Argument 15

G. The Plan Should Be Revised to Incorporate These Comments 15

II. RENEWABLE RESOURCES 16
A. The Use of ACP Funds Collected from Utility's Hourly-Priced Customers 16
B. Curtailment 17
C. Use of the RERF ACP Amounts 17
III. DISTRIBUTED GENERATION 20
A. If the Standard Offer Process is Used, It Requires Further Clarification 21
B. ComEd Does Not Need to File Tariffs for Standard Offer Contracts 21
C. The Delivery Start Dates Should Continue to be June 1 22
IV. MISCELLANEOUS ISSUES 22
A. Updated Forecasts 22
B. Technical Corrections 23
V. CONCLUSION 23

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Commonwealth Edison Company ("ComEd") submits these Verified Objections ("Objections") to the "2013 Power Procurement Plan" ("Plan") filed by the Illinois Power Agency ("IPA") with the Illinois Commerce Commission ("Commission" or "ICC") pursuant to Section 16-111.5(d)(2) of the Illinois Public Utilities Act ("PUA") (220 ILCS 5/16-111.5(d)(2)). This Objection is verified by Mr. William McNeil, who is competent to testify as to the facts he attests to. For the convenience of the Commission and the parties a redlined version of the Plan reflecting ComEd's comments is attached as Appendix A.

In general, ComEd commends the IPA for a very well-drafted and thorough Plan. ComEd supports the Plan's proposal not to conduct any procurement events for energy or renewable energy credits in 2013. ComEd's objections focus primarily on clean coal, the pre-existing long-term renewables contracts and distributed generation by clarifying certain aspects of the Plan in relation to these issues and making it more consistent with the PUA and the Illinois Power Agency Act (20 ILCS 3855/1-1 *et seq.*) ("IPA Act"). Regarding these issues, the Commission should exercise its review authority to ensure that the final, approved Plan is lawful and supported by evidence.

ComEd respectfully urges the ALJ and the Commission to establish a schedule shortly after the review of the Objections. Because of the 90-day statutory deadline, establishing a

schedule in a piecemeal fashion, or later in the process, makes planning more difficult for all. ComEd suggests that the competently verified Objections and any affidavits submitted therewith be deemed pre-filed testimony, and that all parties be permitted to file two rounds of additional submissions, as the Commission has traditionally allowed.

Based on the intervals adopted last year, ComEd recommends that responses to objections be due October 17, 2012, and replies to responses be due October 26, 2012, along with any related testimony or affidavits. This schedule, or one like it, satisfies due process requirements and permits the Commission to meet its deadline with a sustainable final order.

I. CLEAN COAL

The IPA's Plan proposes the procurement of clean coal energy pursuant to a sourcing agreement with FutureGen Industrial Alliance, Inc. ("FutureGen).[1] As the Plan notes, the IPA and FutureGen have held several discussions with ComEd, Ameren and the retail electric suppliers ("RES") in Illinois concerning the terms of the sourcing agreement. Both ComEd and Ameren have proposed significant revisions to the sourcing agreement.[2] While the sourcing agreement attached to the Plan incorporates several of these proposed revisions, many of the more significant proposals are not included and ComEd objects.

Additionally, it is not clear what, if any, approval is actually being sought. The IPA requests approval of the agreement "once agreed upon by all affected parties[.]"[3] However, that does not seem possible given the RES opposition to signing an agreement at all and given

[1] Plan, Section 7.5 at 74-78.

[2] Despite several requests, ComEd has not yet received an editable version of the proposed sourcing agreement. ComEd will file a sourcing agreement that contains ComEd's proposed modifications in redline after the IPA responds to an outstanding data request from ComEd seeking such.

[3] Plan, section 7.5 at 78.

FutureGen's apparent refusal to incorporate many of the utilities' proposed revisions. Nevertheless, ComEd offers the following objections to the agreement attached to the Plan.

A. The IPA Must Present a Complete Sourcing Agreement Before it Can Be Approved by the Commission

Section 1-75(d) of the IPA Act authorizes the Commission to review and approve sourcing agreements with repowered or retrofitted coal-fired power plants such as FutureGen. However, the Commission is authorized to approve only those sourcing agreements "that do not exceed cost-based benchmarks…."[4] The sourcing agreement the IPA attached to its Plan is incomplete: it contains several blank spaces and, most significantly, it contains no detailed cost information relating to each of the contract price components contained in the sourcing agreement. While the sourcing agreement does contain an exhibit that provides a discussion of anticipated customer rate impacts and a projection of the 30-year levelized cost of energy under the agreement, it is not clear that this is adequate pricing information or even if the IPA is suggesting this. At a minimum, all blanks must be filled in before the sourcing agreement can be meaningfully evaluated for its reasonableness and compliance with law.

In addition to pricing information, the following information is also missing from the agreement:

- The Minimum Annual Energy amounts;[5] and,
- The Target Heat Rates;[6]

It appears that the IPA believes that the pricing information attached to the proposed sourcing agreement is adequate for the Commission to review the proposed prices. The Plan

[4] 20 ILCS 3855/1-75(d)(5).

[5] Sourcing agreement, Exhibit 6.6(c)

[6] Sourcing Agreement, Exhibit 5.3, Part D

states that "the FutureGen Alliance has submitted to the IPA information sufficient for the Commission to assess the prices buyers will see for the output of this project," and requests the Commission to approve the reasonableness of the prices."[7] On the other hand, it appears that FutureGen proposes to separate the pricing issue from the rest of the contract approval issues. In section 5.2(c) of the proposed sourcing agreement, FutureGen states that it intends to "request that the Commission, within [180] Days following the approval of this agreement, determine the amount of pre-approved Total Project Costs to be included in the Fixed Project Payment of the Formula Rate[.]"[8]

ComEd is amenable to either solution. The pricing information attached to the plan, in conjunction with the Facility Cost Report referenced in that information, appears to be sufficient to assess whether the costs for FutureGen energy will be under the cap and the benchmarks. That is really all that is needed at this point. The sourcing agreement commits FutureGen to filing for approval of its actual costs at least nine months before commercial operation of the facilities is achieved. That is the best time to assess the actual costs, set an actual price and to reassess whether the price is under both the cap and the benchmarks. The Commission and the parties could spend time and resources now going into great detail regarding all of the estimated costs of the FutureGen facility. But that hardly seems necessary at this time.

If the Commission and the parties want to spend time investigating in detail the estimated costs of FutureGen, then FutureGen's proposal is generally acceptable with some modifications. First, the parties cannot by agreement dictate the process the Commission should follow in any particular action. If FutureGen or the IPA seeks to propose an approval process for the sourcing

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[7] Plan at 78.

[8] Appendix IV to Plan, Section 5.2(c). Similarly, in Section 5.2(b), FutureGen states that it intends to request that the ICC approve a rate of return within 120 days of approval of the agreement.

agreement, then such request should be contained in a pleading to the Commission requesting such relief, or explicitly spelled out in the procurement plan. In either event, this language should be removed from the sourcing agreement.

Second, FutureGen's proposal relates only to the Fixed Project Payment component of the total price for energy. There are six other components that factor into the determination of the price, which is a material term to the sourcing agreement. FutureGen nowhere indicates when or how it intends to seek approval for these components or how the price for FutureGen energy can be compared to benchmarks without this information. FutureGen or the IPA should explain its proposal for review of these other costs.

ComEd is not opposed to parsing out certain issues for later consideration or considering approval of the sourcing agreement in several phases. However, the process must be clearly spelled out and approved by the Commission. In addition, it must be made clear that the parties are not obligated to execute a sourcing agreement until all of its terms, including price, have been presented to and approved by the Commission consistent with Section 1-75(d) of the IPA Act.

B. The Benchmarks Must be Used to Evaluate the Initial Price and All Subsequent Changes to the Price

The Plan indicates the IPA has retained Levitan & Associates, Inc. to develop confidential benchmarks that can be used to assess the reasonableness of the price proposed in the sourcing agreement.[9] The Plan further indicates that the IPA intends to submit the confidential benchmarks to the ICC in conjunction with the procurement proceeding that will take place in 2013. However, as discussed above, it is not clear against what price the benchmarks are being compared to or when that comparison would take place. Moreover, the

[9] Plan at 78.

facility is not even scheduled to come into service until 2017; once it is in service, the pricing mechanism proposed by the sourcing agreement would result in a constantly changing price. The IPA should clarify that the benchmarks will evaluate not only the initial price, but also any and all subsequent changes to that price. This is another reason why it is essential that Commission review and approval occur before the price for energy from FutureGen, or any changes in that price, should be allowed to become effective. In addition, the Plan should be clear that no party has any obligation to execute a sourcing agreement until the benchmarks are developed and approved and used to evaluate the price of energy under the sourcing agreement.

C. Either All or None of the Illinois Electric Utilities (for whom the IPA procures energy) and RES Should be Required to Execute a Sourcing Agreement with FutureGen

While it may be a laudable goal to procure 25% of the electricity used in Illinois from clean coal facilities in order to advance the technology necessary to cleanly convert Illinois basin coal, it is neither fair nor reasonable to require that only certain customers bear the cost of developing this technology. If the development of this technology will benefit the people and State of Illinois, as the Illinois General Assembly apparently believes, then all electric customers should equally bear the cost. Yet, unless certain revisions are made to the proposed FutureGen sourcing agreement, it is only the utilities' customers who will be forced to bear the cost of developing this technology.

In addition to being inherently unfair, compelling only utilities' customers to bear the cost of this project is neither competitively neutral nor practical. As recent events have demonstrated, customers can and will switch to alternative suppliers if faced with higher prices from their utility. Since a utility's obligations under the proposed sourcing agreement (and under the IPA Act) are limited to the load that it serves, having only utilities execute sourcing agreements raises numerous issues regarding the viability of the FutureGen project. At some

point, the limited and dwindling stream of revenue that FutureGen receives under the agreements with utilities will not be sufficient to support the continuation of the project. There seems little point to approving a project if it is structured to fail.

Thus, fairness, competitive neutrality and practicality dictate that either all or none of the existing and future Illinois electric utilities (for which the IPA procures energy) and RES should be required to execute and maintain a sourcing agreement. However, the sourcing agreement that the IPA attached to its Plan is not executed. No Illinois electric utility or RES has signed that document or even indicated it will sign. The IPA has developed procurement plans for both ComEd and Ameren pursuant to which it is seeking Commission authorization to require both ComEd and Ameren to execute the sourcing agreement. However, it is unclear whether any RES will volunteer to sign or whether the IPA or the Commission has any authorization to compel a RES to sign. Thus, much uncertainty surrounds the issue of which entities will ultimately sign a sourcing agreement with FutureGen.

This uncertainty can be resolved with several simple revisions to the sourcing agreements. First, it should be a condition precedent to the effectiveness of the agreement that FutureGen execute sourcing agreements with ComEd, Ameren and all RES. This will permit the utilities, and those RES who are willing to do so, to go ahead and execute an agreement without concern that other RES might not eventually sign. Second, to ensure fairness and project viability for the term of the agreement, FutureGen should be required to maintain these existing agreements and to enter into sourcing agreements with new RES or electric utilities. Because the agreement is for a term of 30 years, there will undoubtedly be much change in the entities who supply energy to retail customers in Illinois during this period. The sourcing agreement must

recognize and address this issue. The failure to do so should be an event of default for which the utilities or RES may terminate the agreement.

D. The Commission May Not Allocate the Output of FutureGen Inconsistently With the Requirements of the IPA Act

The IPA indicates in its Plan that it believes that the Commission has the authority to determine "the allocation of FutureGen 2.0's output among the entities required to purchase[.]" [10] This is not accurate. Section 1-75(d)(3)(C)(1) of the IPA Act provides that a utility is obligated to purchase an amount of energy from a clean coal facility in proportion to its retail market sales of electricity to all retail customers in Illinois. The Commission cannot vary from this statutory requirement. In fact, the language in the sourcing agreement attached to the Plan adopts this allocation methodology. The Plan should be revised to be consistent with the IPA Act and the sourcing agreement.

E. The Proposed Sourcing Agreement Must be Amended to Comply with the IPA Act

The IPA requests approval of the FutureGen project pursuant to Section 1-75(d)(5) of the IPA Act. Under that Section, the Commission is authorized to review and approve sourcing agreements with re-powered or retrofitted coal-fired power plants. Pursuant to the IPA Act, a "Sourcing agreement" is a defined term, which, in pertinent part, is defined as an agreement which "shall have terms and conditions meeting the requirements of paragraph (3) of subsection (d) of Section 1-75[.]"[11] The proposed sourcing agreement fails to meet the requirements of Section 1-75(d)(3) in a number of respects, as stated below.

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[10] Plan at 76.

[11] 20 ILCS 3855/1-10.

1. **The Utilities' Payment Obligation Under the Sourcing Agreement Must Be Limited to Such Amount as the Utility is Allowed to Recover Through Tariffs**

Section 1-75(d)(3)(D)(viii) of the IPA Act provides that the terms of the sourcing agreement should "limit the utility's obligation to such amount as the utility is allowed to recover through tariffs filed with the Commission[.]" While a number of sections of the proposed sourcing agreement purport to recognize this limitation, they all seek to limit or condition it. ComEd objects as these provisions fail to comply with the IPA Act and must be revised or deleted, as set forth below.

First, Section 5.2(i) of the proposed sourcing agreement recognizes that ComEd would not be responsible for charges to the extent that "the Commission disallows recovery[.]"

However, there is no such limitation in the IPA Act. The IPA Act does not require that the Commission be the entity to determine any disallowance. Instead, the IPA Act focuses on the amount that ComEd is "allowed" to recover, regardless of the source of any limitations on that allowance, *i.e.* the Commission, the Illinois General Assembly, the Federal Energy Regulatory Commission ("FERC") or any other entity with the ability to limit ComEd's recovery.

Second, Section 5.3 purports to require ComEd to renegotiate the sourcing agreement if cost recovery is denied. Nothing in the IPA Act requires this, and simply put, there is nothing to negotiate. The limitation in the IPA Act on ComEd's obligations in the event it is not allowed recovery is unconditional and absolute. ComEd has no further obligation for any amounts it cannot recover. The sourcing agreement must be very clear on this point.

2. **Any Change to the Contract Price in the Sourcing Agreement Requires Commission Approval Prior to Its Taking Effect**

Section 1-75(d)(3)(D)(vii) of the IPA Act requires that the terms of the sourcing agreement provide for Commission review of the justness, reasonableness and prudence of the inputs to the formula rate "prior to an adjustment in those inputs[.]" This review is to occur no less than every three years and is to be completed within nine months. However, Section 5.2(b) of the sourcing agreement provides for annual adjustment in the Monthly Contract Prices, but purports to limit Commission review to 120 days; and does not require affirmative Commission approval of these proposed changes prior to those changes taking effect. Similarly, Section 5.6 allows FutureGen to change the Contract Price at any time "[s]ubject to any requirements of the Commission."

ComEd has no disagreement with the frequency with which FutureGen requests changes to its charges, so long as it is done at least every three years as required by the IPA Act. Nor does ComEd object to the proposed length of the Commission's proceedings to review those requests (*i.e.* 120 days). However, it is simply not up to the parties to dictate to the Commission how long it has to decide the matter. That is provided for in the IPA Act. The main concern for ComEd is that regardless of how frequently FutureGen files for revisions, and regardless of how long the Commission decides it needs to review the request, any change in the Monthly Contract Prices under the agreement must not go into effect until the Commission has affirmatively approved them, as the IPA Act requires.

3. **FutureGen Should be Required to Document and Report on the Capture and Sequestration of Carbon Emissions**

Section 1-75(d)(3)(D)(v) of the IPA Act requires FutureGen to report to the Commission annually on the quantity of carbon emissions that have been captured and sequestered. To the

extent that FutureGen fails to capture at least 50% of the total carbon emissions, it must procure carbon offsets. In addition, the Commission is authorized to lower the allowable return on equity for the facility if FutureGen willfully fails to comply with this section.

The sourcing agreement does not contain any requirements from this Section of the IPA Act. The sourcing agreement should be revised to do so.

4. <u>The Sourcing Agreement Cannot be Implemented Through New Tariffs</u>

Pursuant to Section 7.5 of the Plan, the IPA requests that the Commission "approve a sourcing agreement for bundled service customers and ARES customers, and hourly load customers in a competitively neutral manner, utilizing *either a rulemaking or… utility tariffs* to ensure current and future customers are bound while minimizing administrative burden on all parties."[12] ComEd objects to this statement to the extent the IPA implies that the FutureGen sourcing agreement may be implemented through new utility tariffs. According to Section 16-111.5 of the PUA, ComEd is to recover through Rider PE – Purchased Electricity ("Rider PE") "all reasonable costs incurred to implement or comply with any procurement plan that is developed and put into effect pursuant to Section 1-75 of the IPA Act.[13] The IPA has provided no basis as to why costs associated with the implementation of the sourcing agreement should not flow through Rider PE. Accordingly, the reference to "utilizing tariffs" should be deleted.

[12] Plan at 76 (emphasis added).

[13] 220 ILCS 5/16-111.5; Rider PE, ILL. C. C. No. 10, Orig. Sheet No. 311.

F. Other Provisions of the Sourcing Agreement are Unreasonable and Should be Revised

1. Credit Support for ComEd Should Not be Required

Section 14 of the sourcing agreement requires ComEd to provide credit support if its bond rating falls below investment grade. ComEd objects because this requirement is unnecessary, will increase costs to customers and has been previously rejected by the Commission. No other ComEd supply contract, not even ComEd's long-term renewable contracts, requires ComEd to provide credit support. Accordingly, this requirement should be deleted.

As the Commission recognized when it rejected reciprocal credit requirements in Docket No. 05-0160, there is an important difference between ordinary "competitive contracts" and utility supply contracts under which utilities acquire supply for customers they have a duty to serve.[14] ComEd has an obligation to serve its customers and it must meet that obligation, even in the face of adverse regulatory or legislative action. ComEd is required to provide that service under tariffs that are regulated by the Commission. In providing that statutorily-required service, ComEd has a right to cost recovery and at rates that cannot properly be set in a manner that deprives the utility of the opportunity to recover it's reasonable and prudent cost of serving customers.[15] Thus, any risk to FutureGen is minimal, if not non-existent.

Therefore, the proposed credit requirement is unnecessary and will simply serve to increase the costs for what is already a very costly product. This provision should be deleted.

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[14] Final Order, Docket No. 05-0160 (January 24, 2006) at 171.

[15] 220 ILCS 5/9-101 and 9-201.

2. ComEd Should Not Be Required to Support FutureGen's Requests for Approval of Project Costs, the Formula Rate and the Agreement

Various provisions of the sourcing agreement, *e.g.* Section 5.2(f), require ComEd to support FutureGen's efforts to obtain regulatory approval for various aspects of the agreement, including changes to the contract price. This is unreasonable. ComEd should not be required to blindly support increasing costs for its customers. This provision should be deleted.

3. The Commission Should Ensure the Rate Cap is Not Exceeded When it Approves the Prices in the Sourcing Agreement.

Section 6.3 of the sourcing agreement implements the rate cap imposed by Section 1-75(d)(2) of the IPA Act. It provides that FutureGen is to make this determination prior to each contract year with a true-up after each contract year. ComEd agrees that a determination needs be made prior to each contract year that payments under the sourcing agreement will not cause the rate cap to be exceeded. However, since the Commission approves all other cost/prices under the sourcing agreement, the Commission should be the one to make this determination.

4. The Conditions Precedent Section Must Be Strengthened

Section 3.1 sets forth several important conditions that are precedent to the obligations of ComEd under the agreement becoming effective. However, this section lacks an effective enforcement mechanism. FutureGen proposes merely to certify to ComEd that it has satisfied the conditions. This is inadequate. FutureGen controls all of the information needed to determine if the conditions have been satisfied. Therefore, FutureGen should be required to certify "in a form and substance satisfactory to the Buyer" and should be required to provide any documentation requested by the Buyer to support the certification.

5. The Contract Price Adjustment Mechanism Should Adjust for Revenues

Section 5.2(d)(viii) of the sourcing agreement provides that one of the components of the Monthly Contract Price is the Contract Price Adjustment. The purpose of this adjustment is to reconcile or true-up estimated amounts to actual amounts. However, while the Monthly Contract Price is derived from both estimated costs and estimated usage, FutureGen proposes to only true-up estimated costs. This is not appropriate and could result in over-recovery of costs. This adjustment should more appropriately provide for a reconciliation of the sales under all sourcing agreements with what its actual costs were. This will ensure that FutureGen recovers all of its costs, but no more.

6. Net Energy Sales Should be a Component of the Monthly Contract Price

In Section 6.2(c)(ii), FutureGen proposes to adjust the Final Settlement Payment on a monthly basis to reflect the actual amount of revenue it received from the sale of energy into the market for that month. This is unreasonable for several reasons. First, it essentially requires the parties to engage in a monthly reconciliation process. Second, it effectively results in FutureGen unilaterally determining a component of price without prior Commission review or approval. It is more appropriate and consistent with the IPA Act to include Net Energy Sales as a component of the price that the Commission reviews and approves pursuant to Section 5.2 of the sourcing agreement.

7. The Termination Payment Provisions Need to be Revised

The Termination Payment provisions set forth in Section 16.5 of the sourcing agreement are unreasonable and should be revised. Section 16.5(b) provides that FutureGen is solely responsible for determining the amount of the termination payment. However, consistently with

the IPA Act and Section 5.2 of the sourcing agreement, it is the Commission that should be responsible for approving all costs and charges that are to be paid under the agreement.

In addition, this provision requires the payment of the entire amount of the termination payment, even if a portion is disputed. It is a more common practice, and one included in all of ComEd's other supply agreements, that the disputing party pay only the undisputed amount until the matter is resolved. The sourcing agreement should incorporate this change.

8. The Billing Disputes Provision Needs to be Revised

The Billing Disputes provision set forth in Section 7.3 of the sourcing agreement is similarly unreasonable. It requires the payment of the disputed portion of the bill. This provision should also be revised.

9. The Severability Clause Must be Revised to Reflect the Statutory Basis of the Argument

Section 24.5 of the sourcing agreement seeks to preserve the substance of the agreement in the event that any particular clause is held to be invalid, illegal or unenforceable. However, the language of that section fails to fully recognize that this entire agreement arises from operation of the IPA Act. There are certain provisions that are so central to the intent and purpose of what the IPA Act seeks to achieve that if any of these core provisions is eliminated, the entire contract should come to an end. While several of the core provisions are included in the provision, it fails to include the provision that the Commission must approve this agreement and any changes to its terms. The sourcing agreement should be revised to reflect this.

G. The Plan Should Be Revised to Incorporate These Comments

While most of the comments above relate to necessary revisions to the sourcing agreement, the Plan should also be revised to address these concerns.

II. RENEWABLE RESOURCES

A. The Use of ACP Funds Collected from Utility's Hourly-Priced Customers

The IPA's Plan proposes to use the alternative compliance payments ("ACP") that have been collected by ComEd from its hourly-priced service customers "to mitigate any reductions in delivery of RECs under the long term contracts due to the operation of the rate cap."[16] ComEd does not object to the use of the ACP funds collected from ComEd's hourly customers being used to offset, in some fashion, the reduced purchases of renewables under the long-term contracts. However, the process needs to be simple and spelled out clearly in the Commission-approved Plan. Otherwise, because the amounts involved are relatively small, the administrative and operational costs could easily use up the bulk of the available funds.

It is not clear how the IPA proposes to implement this proposal. ComEd believes that the accumulated hourly ACP funds should be used by ComEd to purchase RECs from the long-term renewable contract counterparties at the applicable imputed REC prices which the IPA is asking the Commission to reaffirm in its Plan. The same percentage of original contract quantities that were curtailed for each counter-party would be used to determine the amount of RECs purchased such that the REC purchases did not exceed the available hourly ACP funds. The parties should be required to use an agreement substantially similar to the standard REC agreement that was used in the 2012 REC procurement, with only such changes as are necessary to reflect any significant differences in this situation. One such change would be to allow the suppliers to supply their RECs at any time over the 2013 planning year term of the agreement. ComEd also

[16] Plan at 83 ("ComEd also has accumulated hourly ACP payments that have not been used to purchase RECs. Rather than proposing that ComEd use the accumulated hourly ACP payments to conduct an additional REC procurement, the accumulated funds should be used to mitigate any reductions in delivery of RECs under the long term contracts due to the operation of the rate cap.").

notes that the hourly ACP funds are not in the possession of the IPA but rather in the possession of ComEd. With that being said, ComEd does not object to the IPA's proposed use of the hourly-priced customer ACP funds to purchase RECs in a manner as described above. The Plan should be modified to reflect these clarifications as shown in the attached redlined version of the Plan.

B. Curtailment

The Plan, as currently written, states:

> Section 1-75(c)(2) of the IPA Act requires the IPA to reduce the amount of renewable energy resources to be procured for any particular year in order to keep the "estimated" net increase in charges to eligible retail customers below the statutory cap. Therefore, the purchases under the long term renewable contracts may need to be reduced. An estimate of the overall amount is shown in this Plan for both Ameren and ComEd, however the exact amount is uncertain at this time. Both utilities will be submitting updated forecasts in November 2012 and in March 2013. In addition, it is unclear how much of the additional energy efficiency measures will be approved by the Commission. Once the Commission has approved this Plan, including the updated November forecasts and the incremental energy efficiency program amounts, and the utilities have submitted further updated forecasts in March 2013 to reflect municipal aggregation activity and any Commission-approved energy efficiency programs, each utility should calculate both the overall amount of the necessary reduction to keep the purchases under the statutory cap, and determine the amount that each long term renewable contract will need to be reduced.

While ComEd generally agrees with the presumed intent of this section, the Commission-approved Plan should clarify that curtailments will be applied on an equal, pro-rata basis to all long term renewable contracts. Thus, it should be explicitly stated that, to the extent long term renewables contracts are curtailed, all long term renewable contracts are to be curtailed on an equal, pro-rata basis.

C. Use of the RERF ACP Amounts

The IPA proposes to consider -- outside of the IPA Plan -- use of the ACPs collected from Alternative Retail Electric Suppliers ("ARES") and held in the Illinois Power Agency

Renewable Energy Resource Fund ("IPA RERF") created by Section 1-56 of the IPA Act to further mitigate the effects of curtailments of LT Renewables Contracts pursuant to the statutory caps.[17] While no specific language is presented and the Plan states that the IPA does not believe its spending of RERF funds is subject to Commission approval in IPA utility procurement plans or otherwise, the IPA describes a process involving discussions with utilities to develop a mechanism to address this issue:

> The IPA proposes that, upon receipt of updated load forecasts from the utilities in March 2013 and the establishment of the Renewable Resource Budget for the 2013 delivery year, and a determination and notification by either utility that it will be unable to fully recover its costs of accepting delivery under the contracts due to the operation of the RRB price caps, the IPA will enter into discussions with the utilities and the counter-parties to the 2010 long-term energy and REC contracts to sort out a mechanism wherein a shortfall in the ability of the utility to purchase the REC portion of the output is made up for by the IPA's RERF. The IPA would set up any required accounts and processes at PJM and M-RETS that would facilitate the documented retirement of RECs.[18]

While ComEd expresses no opinion and takes no position one way or the other regarding any proposal for the IPA to use funds held in the IPA RERF to purchase RECs from the other counter-parties to the LT Renewables Contracts that are curtailed pursuant to the statutory caps, the Plan needs more clarity as to what, if any, approval it is seeking from the Commission in this proceeding regarding this proposal. Most of the discussion in the Plan on this issue seems to indicate the IPA is not seeking, and does not need, any Commission approval to pursue its proposal. However, the Plan also includes the following sentence – "[t]he IPA presents this proposal in the context of this Plan, however, because this Plan has uncovered the potential shortfall in the utility ability to compensate the long-term REC sellers and some discussion is necessary to answer the inevitable questions of both the generators under contract and the

[17] Plan at 84.

[18] Plan at 86.

renewable resource investment community."[19] While the Plan attempts to clarify the IPA's intent regarding the proposal to consider use of the IPA's RERF funds, some potential ambiguity remains regarding the language in the Plan. For example, the Plan refers to the "IPA's accumulated hourly ACP funds." It is unclear if this refers to the ACP payments deposited into the IPA RERF or to the ACP payments by utility hourly-priced customers. Similarly, the table on page 4 of the Plan refers to the use of ACP funds held by the IPA and utilities to supplement payments on long term contracts. This appears to imply that use of such funds is a component of the Plan submitted for approval. This language also implies that the IPA has determined to use the IPA RERF funds to mitigate the effect of curtailments, when other parts of the Plan expressly state that the IPA is considering that possibility. The Plan should be modified to eliminate these ambiguities.

The Plan also states that the IPA will discuss use of the RERF with utilities. RERF funds are solely derived from RES customers and thus should be used for purchases for RES customers. It would therefore be inappropriate to even imply that utilities would, in any way, be involved in purchasing such RECs. Although ComEd is always willing to discuss these issues with the IPA and the other parties, there is no basis or requirement under the IPA Act or the PUA for either the IPA or the Commission to require ComEd to sell RECs to the IPA or otherwise be involved in such a transaction. ComEd has no desire or intent to become involved in a transaction that is not made for utility customers and is neither authorized nor required by any provision of the IPA Act or PUA. ComEd does not believe the Plan was intended to imply that the utility would be involved in purchases for RES customers, but the language used is ambiguous in this regard.

[19] Plan at 85.

The simplest solution would be to clarify that the IPA is not seeking any approval from the ICC in this proceeding on this issue and to remove or modify the other language. ComEd proposes language in its proposed revisions to the filed Plan. ComEd expresses no opinion or position regarding any proposal by the IPA to use such funds to purchase RECs that are curtailed pursuant to the statutory caps from other counter-parties to the LT Renewables Contracts.

III. DISTRIBUTED GENERATION

In section 8.2 of the Plan, the IPA discusses the new requirement in the IPA Act to procure a portion of the renewable energy resource requirements from small distributed generators ("DG").[20] The IPA recognizes that there is a great deal of uncertainty concerning when it may be economically feasible to actually implement a DG program. In fact, the IPA does not propose that any RECs be procured pursuant to the Plan. Nevertheless, the IPA proposes a program design for a DG program for which it seeks Commission review and comment in the 2013 Plan and for implementation "at such time as the RPS budgets and available ACP funds allow."[21]

ComEd notes that the IPA's efforts are useful in understanding stakeholder views and could indeed be a good starting point for developing a DG program when it becomes apparent that the utilities will be procuring DG renewable resources. As is evidenced by the discussion below, the IPA has put forth a framework for a DG program, many details of which must be worked out or further articulated. However, that type of program development will be better accomplished in the context of workshops when the time is appropriate. Furthermore, a DG program that is developed through workshops and approved at such time as it is required will

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

[21] Plan at 86-87.

allow the marketplace to more appropriately incorporate the applicable and evolving market conditions into the process. ComEd has the following comments regarding several other parts of the program proposed by the IPA, as reflected below.

A. **If the Standard Offer Process is Used, It Requires Further Clarification**

If the Commission approves a "standard offer" process, as currently set forth in the Plan, further clarification must be added to the "standard offer" that would apply to DG resources < 25 kW. ComEd interprets the process to be that a price would be established and approved by the Commission based upon a competitive procurement of > 25 kW DG resources occurring concurrently with the renewable generation procurement process. The "standard offer" price would therefore have to be established after the procurement of > 25 kW DG renewable resources. ComEd recommends that aggregators of DG resources < 25 kW have a finite period of time after the standard offer price is established (*i.e.*, a two week period shortly after the renewable resource procurement), during which aggregators can execute contracts and put credit requirements and/or performance assurances in place, prior to delivery beginning June 1, consistent with past REC procurements.

B. **ComEd Does Not Need to File Tariffs for Standard Offer Contracts**

ComEd disagrees with the reference to the utilities filing "tariffs with respect to standard offer contracts[.]"[22] While it is not clear what the intended meaning is, nothing in the IPA Act or the PUA requires ComEd to file tariffs relating to the contracts it enters for the procurement of RECs. In fact, the PUA requires the use of standardized contracts that are developed by the

[22] Plan at 92.

procurement administrator.[23] That is how all other contracts for the procurement of RECs have been developed. There is no reason to vary from this practice and this provision should be deleted from the Plan.

C. The Delivery Start Dates Should Continue to be June 1

ComEd objects to the IPA's proposal to offer bidders a choice of start dates for the initial delivery year.[24] The delivery term start dates should continue to be June 1, as is consistent with past practice. This will help reduce the administrative tracking efforts. More importantly, this will allow renewable resource procurement planning and procurement to better align with existing practices and be incorporated into the forecasting and procurement processes for energy and other renewable resources. It will also better ensure that renewable resources budgets are not exceeded.

IV. MISCELLANEOUS ISSUES

A. Updated Forecasts

ComEd agrees with the IPA that the forecast should be updated in November, after the general election, and then again in March of 2013. While there will be no procurement event pursuant to the Plan, ComEd will need to curtail purchases under the LT Renewables Contracts. The amount of that curtailment should be determined on the best available information. Likewise, ComEd will be updating its fixed supply charges to go into effect in July of 2013. These charges should also be based on the best available information. Since there are regular elections scheduled for February and April of 2013, an updated March forecast will permit ComEd to incorporate the best available information on additional municipal aggregation

[23] 220 ILCS 5/16-111.5(c)(1)(v) & (e)(2).

[24] Plan at 89.

flowing from any referenda in those elections. ComEd believes that the forecast will need to be updated to incorporate any changes to the forecast that the Commission approves in its order, such as the amount of additional energy efficiency measures to be procured. Otherwise, the forecast should be updated in March only for the purposes of municipal aggregation, and based on the best information available at the time of the update regarding municipal aggregation, as it is not likely that any of the other variables that impact the forecast will change significantly between November 2012 and March 2013.

B. Technical Corrections

Any remaining miscellaneous typographical and arithmetic errors are corrected in the redlined version of the Plan provided with these Objections and ComEd recommends such changes be adopted.

V. CONCLUSION

For the reasons stated herein, ComEd requests that the Commission approve the Plan as amended by only the revisions described herein.

Dated: October 3, 2012

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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VERIFICATION

I, William P. McNeil, being first duly sworn, depose and state that I am Vice President, Energy Acquisition for Commonwealth Edison Company, that I have read Commonwealth Edison Company's Verified Objections to the Procurement Plan of the Illinois Power Agency, and know the contents thereof, and that the statements contained therein are true and correct to the best of my knowledge, information, and belief.

William P. McNeil

William P. McNeil

Subscribed and sworn to before me
this 3rd day of October, 2012.

Kathleen E Burke

Notary Public

KATHLEEN E. BURKE
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
October 26, 2014