

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

ILLINOIS POWER AGENCY	:	
	:	
Petition for Approval of the	:	No. 13-0546 (Rehearing)
2014 IPA Procurement Plan pursuant to Section	:	
16-111.5(d)(4) of the Public Utilities Act	:	

**BRIEF ON EXCEPTIONS ON REHEARING OF**  
**COMMONWEALTH EDISON COMPANY**

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**BRIEF ON EXCEPTIONS ON REHEARING OF  
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Commonwealth Edison Company (“ComEd”) respectfully submits its Brief on Exceptions on Rehearing to the Administrative Law Judge’s (“ALJ”) Proposed Order on Rehearing dated May 12, 2014 (“Proposed Order” or “PO”). Pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), 83 Ill. Adm. Code 200.830, suggested replacement language is incorporated herein.

**I. INTRODUCTION**

ComEd commends the ALJ for a thoughtful and comprehensive Proposed Order. The Proposed Order fully and fairly summarizes the parties’ positions concerning the proposals relating to (i) the implementation of curtailments of purchases under the Renewables Suppliers (“RS”) long-term power purchase agreements (“LTPPAs”) with ComEd and Ameren Illinois Company (“AIC”) and (ii) the purchase price for renewable energy credits (“RECs”) that are curtailed under the LTPPAs but then purchased by ComEd and AIC using alternative compliance payment (“ACP”) funds accumulated in respect of sales to their customers served under hourly pricing tariffs (“hourly ACP funds”) and by the Illinois Power Agency (“IPA”) using funds accumulated in the Renewable Energy Resources Fund (“RERF”).

The Proposed Order's conclusions rejecting the RS' primary proposal are supported by reasonable analyses based on the testimony admitted into evidence on rehearing and the law. Accordingly, the Proposed Order's conclusion on this issue should be adopted.

The Proposed Order also adopts, in part, the RS' secondary, alternative proposal regarding the purchase of curtailed RECs at prices equal to the contract prices under the LTPPAs less the Day-Ahead Hourly Locational Marginal Prices ("DAH-LMPs") instead of at the imputed REC prices resulting from application of the forward energy price curve developed by the Procurement Administrator, in consultation with the IPA, ICC Staff, and the Procurement Monitor, as approved by the Commission in Docket No. 09-0373. ComEd does not oppose the conclusion reached in the Proposed Order on the RS' secondary, alternative proposal, but does have some recommended technical exceptions intended to simplify and enhance implementation of this proposal.

## **II. TECHNICAL EXCEPTIONS REGARDING IMPLEMENTATION OF MODIFIED SECONDARY ALTERNATIVE PROPOSAL**

The IPA's 2014 Power Procurement Plan ("2014 IPA Plan") filed with the Commission on September 30, 2013, provided for the purchase of curtailed RECs using utility hourly ACP funds at the imputed REC price: "In the event that the Commission approves curtailments based on March 2014 load forecasts, and after consensus of the aforementioned parties then the IPA recommends that the Commission once again approve use of the utility hourly customer ACPs to purchase curtailed RECs at the imputed REC price." 2014 IPA Plan at 105. As noted above, under the RS' secondary, alternative proposal the purchase of curtailed RECs would be made at prices equal to the contract prices under the LTPPAs less the DAH-LMPs instead of at the imputed REC prices resulting from application of the forward energy price curve. The Proposed

Order accepts the pricing component of the RS' secondary, alternative proposal, and limits purchases of curtailed RECs at such prices to the RECs that can be purchased with ACP funds already collected by ComEd and Ameren. PO at 54. ComEd does not take exception to the Proposed Order's conclusion in this regard.

The Proposed Order also addresses implementation of the modified alternative proposal. PO at 54-5. As noted above, the 2014 IPA Plan provides for continued application of the proposal approved last year to purchase curtailed RECs using hourly ACP funds. ComEd understood the proposed implementation under the secondary, alternative proposal to be for the same implementation process adopted last year – consistent with the IPA's proposal in the 2014 IPA Plan – with the addition of the RE's alternative pricing proposal. However, the Proposed Order appears to adopt certain implementation details that could be considered inconsistent with the law, appear to be inconsistent with the Proposed Order's modification of the RS' proposal, or appear to unnecessarily modify the implementation process approved and followed last year.

First, the Proposed Order appears to provide for allocation of the available hourly ACP funds used to purchase curtailed RECs based on the ratio of the Annual Contract Quantity of each supplier's LTPPAs to the aggregate Annual Contract Quantity of all the utility's LTPPAs. PO at 54-5. This allocation methodology could rearrange the preference in the renewable resources portfolio requirement for wind resources and solar photovoltaic resources over other renewable energy resources eligible under the Act and included in the LTPPAs. 20 ILCS 3855/1-75(c)(1) (establishing, on a long term basis, a 75% threshold for wind and a 6% threshold for solar). Allocating hourly ACP funds based on Annual Contract Quantity rather than the Annual Contract Value could alter the priorities recognized in the existing mix of renewable resources under the LTPPAs. For example, solar photovoltaic resources purchased under the

LTPPAs may be more expensive on a per REC basis than other renewable energy resources given the requirement that such resources receive a preference over other renewable resources until the minimum statutory threshold is met. Accordingly, ComEd recommends that the available hourly ACP funds be allocated to each supplier based on annual contract value (Price x Quantity), thereby maintaining the resource type preferences that resulted in the original mix of renewable resources for the LTPPAs.

Second, the Proposed Order modified the RS' secondary, alternative proposal to "recognize the fact that the Commission does not have authority over the IPA's use of the RERF." PO at 54. When discussing implementation, the Proposed Order references the RS' original proposal to have the IPA purchase curtailed RECs if the hourly ACP funds are exhausted before all curtailed RECs are purchases. *Id.* The Proposed Order then proceeds to approve the RS' implementation proposal. For clarity and to avoid confusion, ComEd recommends the Commission's Order make clear that, consistent with the Commission's modification of the RS' secondary, alternative proposal, its approval of the RS' implementation proposal does not adopt the RS' proposal with respect to the IPA's purchase of curtailed REC's.

Third, the Proposed Order references "monthly" settlements, whereas the existing hourly ACP contracts for purchases of curtailed RECs provide for quarterly settlements. PO at 54. Last year, the Commission explicitly approved use of the standard REC contract for the hourly ACP fund purchases:

ComEd suggests 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.

ComEd suggests 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 believes Staff's proposed addition is an improvement, but believes modification as follows would be more

consistent with the contract language while addressing Staff's concern: Any such reductions should be applied proportionately to each the long-term renewable contracts consistent with the terms of the contracts ~~on an equal, pro-rata basis.~~

It appears to the Commission that ComEd's recommendations articulated immediately above are consistent with the IPA's Plan and Staff's goals regarding the use of ACP funds. The Commission finds that these recommendations and clarifications are reasonable and should be reflected in the approved 2013 Procurement Plan.

*Illinois Power Agency*, ICC Docket No. 12- 0544, (Order December 19, 2012) at 114-15.

ComEd recommends that the Commission's Order provide for continuation of the existing contract terms providing for settlements on a quarterly basis.

Exceptions Language:

ComEd recommends that the modifications discussed above be implemented through the following revisions to the language of the Proposed Order at pages 54-55:

The RS says at the start of the year, the utility's accumulated balance of hourly ACP funds would be allocated pro rata to the LTPPA suppliers based on the Annual Contract Quantity of each supplier's LTPPAs to the aggregate Annual Contract Quantity of all the utility's LTPPAs. Going forward into the year, the RS proposes for each supplier's allocated portion of the hourly ACP balance to be used to purchase the full amount of that supplier's curtailed RECs in each month, until that supplier's portion is exhausted. ~~If a supplier's allocated portion of the hourly ACP funds is exhausted by the purchase of curtailed RECs from that supplier before the end of the year (May 31), the RS says that supplier can sell any remaining curtailed RECs for the remainder of the year to the IPA.~~

In terms of the settlement mechanics of the utility's purchase of curtailed RECs from a LTPPA supplier, the RS proposes for the utility to simply settle with the supplier each month for the curtailed RECs purchased with hourly ACP funds on the basis of the same price data used to settle the non-curtailed part of the LTPPAs, i.e., the LTPPA Contract Price less the Day-Ahead Hourly LMPs in that month.

The IPA indicates that the RS' implementation proposal appears to take into account the questions raised by the IPA and Staff and the IPA has no objection to the Commission adopting this methodology. In its Brief on Exceptions, ComEd recommends several clarifications with respect to implementation of the modified RS' secondary proposal. First,

ComEd recommends that hourly ACP funds be allocated for the purchase of curtailed RECs from suppliers on the basis of annual contract value (Price x Quantity) instead of Annual Contract Quantities so as to maintain any preferences for certain resource types contained in the law (see 20 ILCS 3855/1-75(c)(1)) and reflected in the renewable resources mix making up the LTPPAs. In other words, some renewable resource types were preferred over others and those bids may have been selected over other bids notwithstanding a higher per unit price due to the statutory preferences. Allocating on the basis of value rather than quantity maintains such statutory preferences. Second, ComEd recommends that the Commission delete any reference to the IPA purchase of curtailed RECs in discussing implementation because the Commission is modifying that portion of the RS' proposal. Third, ComEd noted that the Commission previously approved use of the standard REC contract for the purchase of curtailed RECs, and that those contracts provide for settlement on a quarterly basis. ComEd recommends that the Commission avoid unnecessary contract modifications and maintain the quarterly contract settlement. The Commission notes that no party objected to the RS' proposed implementation methodology in its briefs.

\_\_\_\_\_The Commission concludes that the RS' proposed implementation methodology for the RS' modified alternative proposal adopted herein, with the modifications and clarifications recommended by ComEd as discussed above, is reasonable and should be adopted.

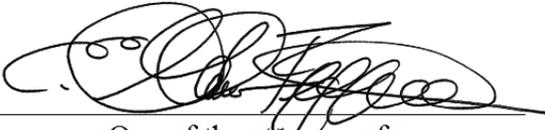
**III. CONCLUSION**

WHEREFORE, ComEd respectfully requests that the Proposed Order be modified as set forth herein.

Dated: May 23, 2014

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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