

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY :
 : Docket No. 14-0588
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. ENERGY EFFICIENCY 2

A. ComEd Supports the EEAASR Alternative Proposal, Subject to Modifications Described Herein..... 5

B. The General Assembly Acquiesced in the Commission’s Interpretation of Section 16-111.5, and Separately Created Section 16-111.5B as the Exclusive Provision through which Energy Efficiency Could Be Procured. 8

C. Proposed Procurement of EEAASR Fails to Comply with the Requirements of Section 16-111.5B of the PUA..... 11

D. If an EEAASR Proposal Could Be Brought Under Section 16-111.5 (and It Cannot), the Proposal Would Nevertheless Fail to Satisfy the Requirements of Section 16-111.5. 15

1. No evidence that EEAASR is a standard wholesale product..... 15

2. Section 16-111.5’s procurement is limited to “eligible retail customers.” 16

3. No evidence that EEAASR is the lowest cost option for customers. 18

E. The EEAASR Proposal Is Too Speculative and Undeveloped to Implement. .. 19

F. The Plan Should Be Revised to Delete the EEAASR Proposal and Direct That Stakeholders Address the EEAASR Alternative Proposal in Workshops..... 21

II. MISCELLANEOUS ISSUES 21

A. Procurement of Solar Renewable Energy Credits..... 21

B. Using Hourly Alternative Compliance Payments to Meet Distributed Generation Goals. 22

III. CONCLUSION 25

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY :
 : Docket No. 14-0588
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**

Commonwealth Edison Company (“ComEd”) submits these Verified Objections (“Objections”) to the “2015 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)). These Objections are verified by Scott A. Vogt and Michael S. Brandt, who are competent to testify as to the facts to which they attest. 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 well drafted Plan, and is generally supportive of its major elements. Although ComEd cannot support the Energy Efficiency as a Supply Resource (“EEAASR”) Procurement proposal because it would seek to procure energy efficiency contrary to Sections 16-111.5 and 16-111.5B of the PUA, prior Commission orders, and the Illinois Power Agency Act (20 ILCS 3855/1-1 *et seq.*) (“IPA Act”), ComEd is willing to further explore the EEAASR Alternative proposal. Unlike the EEAASR proposal, the Alternative proposal would be considered under Section 16-111.5B, which is the exclusive statutory provision through which incremental energy efficiency can be procured in conjunction with the Plan. Working within this framework, the Plan suggests that the details regarding the

Alternative proposal could be further developed in the workshop process to be held to discuss issues related to the Total Resource Cost Test (“TRC Test”). ComEd generally supports this proposal, and identifies several issues for consideration in the workshop process. *See* Section I.A *infra*.¹

ComEd respectfully urges the Administrative Law Judge (“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. In that regard, ComEd makes the following suggestions: the competently verified Objections and any affidavits submitted therewith be deemed pre-filed testimony; and all parties be permitted to file two rounds of additional submissions, as the Commission has allowed in the past. ComEd recommends that responses to objections be due October 20, 2014, and replies to responses be due October 30, 2014, along with any related testimony or affidavits.²

I. ENERGY EFFICIENCY

The Plan recommends procurement of EEAASR through procurement of energy efficiency “super-peak blocks,”³ which it describes as “a demand-side product delivered during the hours of 3 p.m. to 7 p.m. CST on summer non-NERC holiday weekdays (*e.g.*, 4-hour blocks for 5 days a week – other than July 4th if it falls on a weekday – for the period running

¹ While these Objections identify specific ways to improve the Plan and make it consistent with applicable laws, ComEd’s silence regarding any issue not addressed in these Objections should not be interpreted as agreement with all statements, approaches, calculations, or recommendations made in the Plan pertaining to that issue.

² Under Section 16-111.5(d)(3) of the PUA, the Commission must make an initial determination of “whether a hearing is necessary” within 10 days. In past procurement cases, the Commission has not held evidentiary hearings, and instead has been able to decide those cases without needing to resolve a genuine and material factual dispute. That may be the case this year as well. However, an evidentiary hearing is required if genuine factual issues must be resolved in order to rule on the Plan. As such, ComEd does not waive any procedural rights at this time.

³ Plan, pp. 68-72.

from June 1 through August 30),” and which “equates to approximately 260 hours per delivery year.”⁴ The Plan contends that “[t]o the extent load reductions during the super-peak time result in load shifting to other times, the cost impact of the load reductions should net out the expected increased costs incurred by eligible retail customers at those other times.”⁵

The Plan, however, cites no authority for the EEAASR proposal. Indeed, the Commission has already determined that energy efficiency proposals such as this cannot be brought under Section 16-111.5 of the PUA. The General Assembly subsequently concurred in the Commission’s judicial construction of Section 16-111.5, and separately created new Section 16-111.5B as the exclusive vehicle through which incremental energy efficiency could be procured in conjunction with the annual procurement process under Section 16-111.5. Yet, the EEAASR proposal does not satisfy the mandatory criteria set forth in Section 16-111.5B. For example:

- The Plan fails to demonstrate that the EEAASR proposal satisfies the required TRC Test.
- The EEAASR proposal would unlawfully procure energy efficiency from customers that are outside of the scope of Section 16-111.5B.
- The EEAASR proposal would unfairly and unlawfully seek to recover all of its costs from just a small subset of the customers from whom energy efficiency is being procured.

See 220 ILCS 5/16-111.5B.

⁴ Plan, p. 70.

⁵ *Id.*

And, lest there be any doubt, the General Assembly has not amended the original Section 16-111.5 to accommodate EEAASR. The Commission’s conclusions in Docket No. 10-0563 therefore remain undisturbed – Section 16-111.5 does not authorize energy efficiency procurement under its terms, and, in any event, it is unclear how energy efficiency could be considered a “standard wholesale product” under Section 16.111.5. The EEAASR proposal also runs afoul of Section 16-111.5’s directive that the procurement be *limited to eligible retail customers* – a subset of ComEd’s customers eligible to take fixed-price bundled service from ComEd and are in fact doing so. Instead, the proposal would permit procurement from *all* customers in the utility’s service territory, including large industrial customers, which would do nothing to reduce the amount of supply needed to serve eligible retail customers. Making things worse, these eligible retail customers would be required to pay for the efficiency procured from these large customers despite receiving no benefit from it.

While the IPA “believes it has the authority” to implement the EEAASR proposal (despite citing none), the Plan nevertheless also includes an EEAASR Alternative proposal.⁶ Interestingly, the Alternative proposal is brought under and subject to Section 16-111.5B (which, as noted above and discussed below, is the exclusive provision through which incremental energy efficiency measures may be procured in conjunction with the annual procurement process under Section 16-111.5). As explained in Section I.A *infra*, ComEd supports further consideration of this Alternative proposal through the contemplated workshops and subject to the modifications described below.

⁶ Plan, p. 72.

A. ComEd Supports the EEAASR Alternative Proposal, Subject to the Limitations and Modifications Described Herein.

As discussed above and in the remaining subsections of this Section, proposals to procure incremental energy efficiency in conjunction with the Plan must be brought under Section 16-111.5B. While the EEAASR proposal is not brought under that Section and otherwise contravenes Section 16-111.5, the EEAASR *Alternative* proposal is in fact proposed under Section 16-111.5B. Because the IPA did not present the Alternative proposal in its Draft Plan, however, this is the first time that stakeholders have had an opportunity to review and comment on it. Even so, the EEAASR Alternative proposal is quite short, and ComEd generally supports its consideration within the parameters of Section 16-111.5B. The brevity of the proposal, however, also leaves unanswered several key questions and concerns regarding its implementation. As a result, ComEd agrees with the Plan’s recommendation that the workshop process to be initiated around TRC Test issues also include a discussion of how the EEAASR Alternative proposal might be incorporated into the existing Section 16-111.5B request-for-proposals (“RFP”) process.⁷

The specifics of the EEAASR Alternative proposal are set forth in four bullets on page 72 of the Plan. ComEd has identified below its preliminary questions and concerns with respect to each of these bullets.

- *“Specifically include a request for proposals for targeted programs that could identify and demonstrate reductions during peak periods.”*
 - **ComEd’s Comments:** It is unclear to ComEd whether the Alternative proposal calls for another RFP separate from the RFP already proposed for procurement of incremental energy efficiency under Section 16-111.5B. ComEd notes that the

⁷ Plan, p. 80, fn. 141.

utilities' RFP timelines are already quite aggressive under the existing solicitation process, and it is difficult, if not impossible, to see how a separate RFP process could be conducted. ComEd therefore recommends that the Alternative proposal be accommodated within the existing RFP simply by adding a paragraph to address the targeted programs component.

- *“Update the TRC test for these targeted programs to use a time-specific avoided energy cost that would account for the higher price of power that is offset. This would allow for greater flexibility in programs that could bid.”*
- ***ComEd's Comments:*** It is important to understand that ComEd's proprietary cost-effectiveness tool – DSMore – *already* conducts cost-benefit tests using hourly values (as opposed to an average annual value). This means that a program or measure that only saves energy during certain prescribed hours is already being modeled with this tool as the Alternative proposal recommends. Moreover, DSMore runs multiple scenarios that address varying combinations of weather and market prices, which allows ComEd to consider the impact of warmer or cooler weather, as well as higher or lower future energy prices, on TRC results. As such, no modifications need to be made to ComEd's DSMore cost-effectiveness analysis to implement the Alternative proposal.
- *“Provide an additional financial incentive to these programs for demonstrated peak period kWh reductions. This additional incentive could take on the form of the difference between the estimated average energy cost and the estimated energy cost during peak periods.”*

- **ComEd's Comments:** Section 16-111.5B's third party RFP process does not prescribe incentive levels, and ComEd strongly recommends that this framework remain unchanged. Importantly, any program that is cost-effective under the TRC Test and provides incremental savings under Section 8-103 of the PUA would be eligible. Because DSMore properly evaluates the time-based savings of programs, the TRC Test result will already value the peak hour savings correctly. The determination of appropriate incentive levels, however, should remain within the purview of the third party that is making the proposal to implement the program.
- *“For the reasons described in the IPA’s core EEASR [sic] procurement principles, these bids should be for programs of at least three-years in duration.”*
- **ComEd's Comments:** Section 16-111.5B provides for procurement of cost-effective energy efficiency measures to achieve energy savings that are “incremental” to the energy savings mandated by Section 8-103. *See* 220 ILCS 5/16-111.5B; 220 ILCS 5/8-103. As a result, Section 8-103 programs always serve as a baseline and reference point for the Section 16.111.5B process and procurement. Yet, the recommendation that programs under the EEASR Alternative proposal be “at least three years in duration” would mean that these new Section 16-111.5B programs would involve bids and contracts for periods that extend at least two years past the programs approved in ComEd’s current Section 8-103 plan. As such, the required determination as to whether these programs under the Alternative proposal are “incremental” could not be made because the Section 8-103 programs will not yet have been determined.

Accordingly, ComEd recommends that the Alternative proposal's programs not exceed the length of the current Section 8-103 plan programs.

Based on these concerns, ComEd concurs with the Plan's recommendation that issues associated with the EEAASR Alternative proposal could be further explored during the workshop process convened to discuss TRC Test issues.⁸ This is especially true given that stakeholders only first heard of the Alternative proposal in the September 29, 2014 Plan. Indeed, the concerns identified by ComEd likely are not unique to the company, and ComEd anticipates that Ameren Illinois, Commission Staff and others may share these concerns or identify others. As a result, at this juncture ComEd recommends that the Commission direct that the EEAASR Alternative proposal be taken up in the workshops and decline to order specific modifications to the Section 16-111.5B RFP process at this time.

B. The General Assembly Acquiesced in the Commission's Interpretation of Section 16-111.5, and Separately Created Section 16-111.5B as the Exclusive Provision through which Energy Efficiency Could Be Procured.

While the EEAASR Alternative proposal warrants serious consideration, Section 16-111.5B, its legislative history, and Commission practice mandate rejection of the Plan's original EEAASR Procurement Proposal. The IPA first proposed EEAASR in 2010 as part of its 2011 Plan. The Commission carefully considered the proposal, but ultimately concluded that energy efficiency could not be considered under Section 16-111.5 and, in any event, did not appear to be a "standard wholesale product" as required by that Section:

The IPA Act contains only a few references to energy efficiency, none of which expressly grant the IPA authority to procure it as part of any procurement Plan

Similarly, the PUA contains no express language authorizing the IPA to acquire energy efficiency through the Plan. Rather, the PUA provides

⁸ Plan, p. 80, fn. 141.

through Section 8-103 that electric utilities shall implement energy efficiency measures through plans approved by the Commission

In contrast to the lack of clear authorization to implement the EEAR proposal, the PUA and IPA Act expressly authorize the procurement of demand response and renewable energy resources ***In light of the attention paid to demand response and renewable energy, the Commission does not believe that the legislature would have remained silent regarding energy efficiency if it indeed intended for energy efficiency to be part of the Plans.***

In addition to the lack of clear language authorizing the procurement of energy efficiency as a resource, the EEAR proposal suffers from other problems as well. For example, the IPA has not specified the quantity and term of energy efficiency it intends to seek. ***Even if the quantity and term were specified, it is difficult to see how EEAR can be considered “a standard wholesale product” as required by 16-111.5(b)(3)(iv) of the PUA.*** Setting aside this obstacle for the moment, the Commission observes that obtaining any level of energy efficiency as part of the Plan may result in too much power and electricity being procured given the other procurement efforts described in the Plan. The IPA also neglects to describe how it would ensure that any energy efficiency procured under the Plan would not overlap or be double counted with energy efficiency acquired under the EEPS programs. The spending limits under Section 8-103 are also not addressed by the IPA.

In light of these statutory and practical concerns, the Commission finds that the IPA should not attempt to procure energy efficiency as another resource under the Plan.

Illinois Power Agency, ICC Docket No. 10-0563, Order (Dec. 21, 2010) at 42-43 (emphasis added).

During 2011, the General Assembly subsequently enacted the Energy Infrastructure Modernization Act (“EIMA”), which, *inter alia*, amended Section 16-111.5 as well as added new Section 16-111.5B to the PUA. 220 ILCS 5/16-111.5B. While the legislature’s amendments to Section 16-111.5 did not address energy efficiency, new Section 16-111.5B establishes a specific evaluation and proposal process for the procurement of additional energy efficiency in conjunction with the annual procurement process under Section 16-111.5. This

energy efficiency procurement is limited to the specific customer groups and other criteria set forth in Section 16-111.5B, and must be incremental to Section 8-103's energy efficiency portfolio. *See* 220 ILCS 5/16-111.5B; 220 ILCS 5/8-103.

When this Commission practice and legislative history are duly considered, two conclusions can be reached: (i) the General Assembly has acquiesced in (or "affirmed") the Commission's interpretation of Section 16-111.5 (*i.e.*, Section 16-111.5 does not provide for procurement of energy efficiency), and, therefore, (ii) the only means by which efficiency may be procured in conjunction with the annual procurement process is through satisfying the requirements of Section 16-111.5B.

Well-established principles of statutory construction support these conclusions. "[W]here the legislature chooses not to amend a statute after a judicial construction, it will be presumed that it has acquiesced in the court's statement of the legislative intent." *In re Marriage of O'Neill*, 138 Ill. 2d 487, 495-96 (1990) (internal quotations omitted). And, legislative acquiescence is particularly powerful, where, as here, the legislature has amended other portions of the same law but left the relevant provision unchanged. *State Bank of Cherry v. CGB Enters., Inc.*, 2013 IL 113836, ¶ 61.⁹ Put another way, it is determinative that the legislature amended Section 16-111.5 following the Commission's interpretation of the statute, but did nothing to disturb that interpretation. To the contrary, the legislature expressly provided for energy efficiency procurement *separate from and outside of* Section 16-111.5.

As a result, the IPA's EEAASR proposal can only be approved insofar as it complies

⁹ *See also id.* ("We also note that *Farm Fresh* is the only federal court of appeals decision to squarely decide the issue Yet in the eight years since the case was decided, Congress has chosen not to amend the Act ... even though it has amended section 1631 during that period in other respects. This raises the presumption that Congress is satisfied with the judicial construction placed on the statute by *Farm Fresh*"); *Karbin v. Karbin*, 2012 IL 112815, ¶ 47 (holding that "where the legislature chooses not to amend terms of a statute after a judicial construction, it will be presumed that it has acquiesced in the court's statement of legislative intent").

with the requirements of Section 16-111.5B. As explained in Section I.C *infra*, it does not.

C. Proposed Procurement of EEAASR Fails to Comply with the Requirements of Section 16-111.5B of the PUA.

As explained above, Section 16-111.5B exclusively governs the IPA's procurement of energy efficiency measures. 220 ILCS 5/16-111.5B. However, neither the IPA nor any other party offers EEAASR as one of the projects to be evaluated for inclusion in this year's Plan under Section 16-111.5B. Consequently, the detailed analyses required thereunder either were not performed or have not been presented. Perhaps most importantly, no showing has been made that the EEAASR proposal passes the TRC Test, as required by Section 16-111.5B. Specifically, Section 16-111.5B sets forth a thorough set of requirements that must be satisfied prior to including incremental energy efficiency within a procurement plan:

(3) In addition to the information provided pursuant to paragraph (1) of subsection (d) of Section 16-111.5 of this Act, each Illinois utility procuring power pursuant to that Section shall annually provide to the Illinois Power Agency by July 15 of each year, or such other date as may be required by the Commission or Agency, an assessment of cost-effective energy efficiency programs or measures that could be included in the procurement plan. The assessment shall include the following:

(A) A comprehensive energy efficiency potential study for the utility's service territory that was completed within the past 3 years.

(B) Beginning in 2014, the most recent analysis submitted pursuant to Section 8-103A of this Act and approved by the Commission under subsection (f) of Section 8-103 of this Act.

(C) Identification of new or expanded cost-effective energy efficiency programs or measures that are incremental to those included in energy efficiency and demand-response plans approved by the Commission pursuant to Section 8-103 of this Act and that would be offered to all retail customers whose electric service has not been declared competitive under Section 16-113 of this Act and who are eligible to purchase power and energy from the utility under fixed-price bundled service tariffs, regardless of whether such customers actually do purchase

such power and energy from the utility.

(D) Analysis showing that the new or expanded cost-effective energy efficiency programs or measures would lead to a reduction in the overall cost of electric service.

(E) Analysis of how the cost of procuring additional cost-effective energy efficiency measures compares over the life of the measures to the prevailing cost of comparable supply.

(F) An energy savings goal, expressed in megawatt-hours, for the year in which the measures will be implemented.

(G) For each expanded or new program, the estimated amount that the program may reduce the agency's need to procure supply.

In preparing such assessments, a utility shall conduct an annual solicitation process for purposes of requesting proposals from third-party vendors, the results of which shall be provided to the Agency as part of the assessment, including documentation of all bids received. The utility shall develop requests for proposals consistent with the manner in which it develops requests for proposals under plans approved pursuant to Section 8-103 of this Act, which considers input from the Agency and interested stakeholders.

(4) The Illinois Power Agency shall include in the procurement plan prepared pursuant to paragraph (2) of subsection (d) of Section 16-111.5 of this Act energy efficiency programs and measures it determines are *cost-effective* and the associated annual energy savings goal included in the annual solicitation process and assessment submitted pursuant to paragraph (3) of this subsection (a).

(5) Pursuant to paragraph (4) of subsection (d) of Section 16-111.5 of this Act, the Commission shall also approve the energy efficiency programs and measures included in the procurement plan, including the annual energy savings goal, *if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act.*

* * *

(b) For purposes of this Section, the term “energy efficiency” shall have the meaning set forth in Section 1-10 of the Illinois Power Agency Act, and the term

“cost-effective” shall have the meaning set forth in subsection (a) of Section 8-103 of this Act.

220 ILCS 5/16-111.5B(a)(3), (4), (5), (b) (emphasis added). Importantly, none of the required analyses, comparisons or showings has been provided in support of the EEAASR proposal, and the absence of this evidence alone should conclusively bar further consideration of this proposal. Even so, ComEd wishes to call the Commission’s attention to three particular issues.

First, the “cost-effective” standard runs throughout all stages of the Section 16-111.5B process – the IPA can only include “cost-effective” programs and measures in the Plan, and programs and measures ultimately approved by the Commission must, *inter alia*, be cost-effective and otherwise satisfy the requirements of Section 8-103. Section 16-111.5B further clarifies that “cost-effective” has the meaning set forth in Section 8-103(a), which in turn states that “‘cost-effective’ means that the measures satisfy the total resource cost test” as defined in Section 1-10 of the IPA Act. 220 ILCS 5/8-103(a). The TRC Test is defined as follows:

“Total resource cost test” or “TRC test” means a standard that is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures. A total resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases.

20 ILCS 3855/1-10.

Despite this clear requirement, no showing has been made that the EEAASR proposal satisfies the TRC Test (or that any TRC Test has even been performed). Indeed, the Plan notes that “the utilities are required to provide, along with their load forecasts, an assessment of cost-effective energy efficiency programs or measures that could be included in the Procurement Plan” and that “[b]oth Ameren Illinois and ComEd have provided this information”¹⁰ Because Ameren Illinois’ and ComEd’s submissions are designed to already include all cost-effective energy efficiency measures that satisfy the TRC Test, it is notable that EEAASR is not included among these measures.¹¹ Thus, one conclusion that can be drawn from this evidence is that the additional energy efficiency measures procured by the IPA for super-peak blocks would very likely fail to pass the TRC Test and otherwise contravene Section 16-111.5B.

Second, the EEAASR proposal would unlawfully procure energy efficiency from customers that are outside of the scope of Section 16-111.5B. In particular, the proposal contemplates procuring energy efficiency from all customers in the utility’s service territory, which squarely contradicts the express limitation in Section 16-111.5B(a)(3)(C) that incremental energy efficiency “would be offered to all retail customers whose electric service has not been declared competitive under Section 16-113 of the Act and who are eligible to purchase power and energy from the utility under fixed-price bundled service tariffs, regardless of whether such customers actually do purchase such power and energy from the utility.” 220 ILCS 5/16-111.5B(a)(3)(C). Yet, the EEAASR proposal notes that all utility customers would be included: “EEAASR resources may be procured from customers throughout each utility’s service territory (not merely ‘eligible retail customers’ but also from competitive-class customers).”¹²

¹⁰ Plan, p. 12.

¹¹ See Plan, p. 79 (regarding Ameren Illinois) and p. 83 (regarding ComEd).

¹² Plan, p. 70.

Third, Section 16-111.5B limits the cost recovery for such incremental energy efficiency programs to the same group of customers who are offered the programs, yet the EEAASR proposal would presumably recover the costs of EEAASR through the supply charge applicable to only the utility's eligible retail customers (*i.e.*, those customer who are eligible to take fixed-price bundled service from ComEd and do so). This not only violates the statute, but also unfairly forces eligible retail customers to pay for reductions in usage that do not impact or benefit such customers (*e.g.*, fund efficiency for industrial customers).

D. If an EEAASR Proposal Could Be Brought Under Section 16-111.5 (and It Cannot), the Proposal Would Nevertheless Fail to Satisfy the Requirements of Section 16-111.5.

Even if Section 16-111.5B did not exclusively govern the IPA's procurement of energy efficiency measures (and it does), the Plan's recommendation to procure energy efficiency measures for super-peak blocks would also fail to satisfy the requirements of Section 16-111.5.

1. No evidence that EEAASR is a standard wholesale product.

As an initial matter, the EEAASR proposal does nothing to overcome the obstacles identified in the Commission's order in Docket No. 10-0563, namely that "it is difficult to see how EEAR can be considered 'a standard wholesale product' as required by 16-111.5(b)(3)(iv) of the PUA." *Illinois Power Agency*, ICC Docket No. 10-0563, Order (Dec. 21, 2010) at 43. Specifically, Section 16-111.5 states in part as follows:

(b) ... A procurement plan shall include each of the following components:

* * *

(3) A plan for meeting the expected load requirements that will not be met through preexisting contracts. This plan shall include:

* * *

(iv) the proposed mix and selection of *standard wholesale products* for which contracts will be executed during the next year, separately or in combination, to meet that portion of its load requirements not met through pre-existing contracts, including but not limited to monthly 5 x 16 peak period block energy, monthly off-peak wrap energy, monthly 7 x 24 energy, annual 5 x 16 energy, annual off-peak wrap energy, annual 7 x 24 energy, monthly capacity, annual capacity, peak load capacity obligations, capacity purchase plan, and ancillary services; ...

220 ILCS 5/16-111.5(b)(3)(iv) (emphasis added).

To further clarify, a standard wholesale product is one that is routinely traded in a liquid market and has visible price indices that allow market participants to be confident that the prices that they receive are fair market prices. While indices exist for prices 5x16 and 7x24 power specified in the Act, the IPA has presented no evidence of such visible market prices for its proposed super peak product. Consequently, the proposed procurement of EEAASR fails to meet this important criterion. To the extent that the Commission deems it necessary to address the Plan's request for a determination as to whether EEAASR resources satisfy the statutory definition of "standard wholesale product,"¹³ the Commission should, consistent with its prior order, conclude that they do not.

2. Section 16-111.5's procurement is limited to "eligible retail customers."

Section 16-111.5 is clear that its procurement requirements are limited to a utility's "eligible retail customers," a group statutorily defined to include only the following:

"Eligible retail customers" ... means those retail customers that purchase power and energy from the electric utility under fixed-price bundled service tariffs, other than those retail customers whose service is declared or deemed competitive ... , customers electing hourly pricing, or those customers who are otherwise deemed ineligible for fixed-price bundled tariff service.

¹³ Plan, p. 70, fn. 116.

220 ILCS 5/16-111.5(a).¹⁴ As a result, “[t]hose customers that are excluded from the definition of ‘eligible retail customers’ shall not be included in the procurement plan load requirements” *Id.* Yet, contrary to this long-standing and uncontested limitation, the EEAASR proposal would procure energy efficiency from all customers in a utility’s service territory. Because procurement of energy efficiency from a large industrial customer would not reduce the amount of supply needed to serve eligible retail customers (a group that generally includes residential and certain small commercial customers), the EEAASR proposal thus fails to qualify as an alternative means of procuring supply to serve eligible retail customers.

This “mismatch” is further heightened when cost recovery is considered. Because Section 16-111.5 limits its applicability to eligible retail customers, the cost recovery mechanism (Rider PE – Purchased Electricity) similarly limits cost recovery to eligible retail customers. This means that eligible retail customers would be required to pay for procurement of energy efficiency from all retail customers in a utility’s service territory despite their inability to realize any reduced energy consumption or benefit from energy efficiency procured from commercial and industrial customers. Put another way, the EEAASR proposal would require that eligible retail customers subsidize energy efficiency for these larger customers. The Commission should avoid such a perverse and unfair result.

Finally, it should be noted that the General Assembly carefully avoided these mismatch and subsidization problems altogether in Section 16-111.5B. There, the legislature ensured parity between (a) the customers to whom energy efficiency would be offered, and (b) the customers who would pay for such efficiency. It is therefore not surprising that energy efficiency proposals outside of this legislatively prescribed framework (such as EEAASR) will

¹⁴ Or, to put it more simply, eligible retail customers are those customers that are eligible to take fixed-price bundled service from the utility (generally residential and certain small commercial customers) and in fact do so.

run afoul of Section 16-111.5 and associated tariffs – the General Assembly never intended that such proposals be shoehorned into Section 16-111.5.

3. No evidence that EEAASR is the lowest cost option for customers.

Section 16-111.5(d)(4) provides that “[t]he Commission shall approve 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.” 220 ILCS 5/16-111.5(d)(4). Yet, the EEAASR proposal fails to make any concrete showing that it would satisfy the “lowest total cost over time” standard. While the IPA postulates that EEAASR “could potentially constitute a lower cost alternative than comparable supply,” there is nothing to support this contention.¹⁵ The IPA offers neither financial analysis, nor data from other utilities using this program, nor any other evidence that demonstrates that customers will achieve savings after bearing the administrative costs of this additional procurement. Indeed, the IPA implicitly acknowledges that EEAASR is a high cost rather than low cost resource when it proposes to ban generation/supply side participants from competing. Not only is this discriminatory (an illegal preference), it highlights the fact that the EEAASR proposal cannot meet the “lowest cost” requirement of the PUA. One of the reasons for this could be that the procurement block size is very small (100 kilowatts vs. 25,000 kilowatts (“kW”) for the wholesale blocks the Commission has approved) resulting in the relative weight of administrative costs being more burdensome for a proposal of this type. The legislature implicitly acknowledges this fact elsewhere in the IPA Act when it mandates a minimum aggregation of 1 megawatt (“MW”) capacity for procuring distributed generation, which is also small in size. *See* 20 ILCS 3855/1-75(c)(1).

¹⁵ Plan, p. 68.

In addition, as discussed below, no rationale is presented for why EEAASR participants will sell their product to the IPA at significantly lower prices than they would receive from the PJM markets which is the benchmark for savings that should be used.

E. The EEAASR Proposal Is Too Speculative and Undeveloped to Implement.

As explained above, the EEAASR proposal is not accompanied by any of the supporting analyses required for its consideration or approval under Section 16-111.5B. *See* Section I.C *supra*. And, while the proposal cannot be considered under Section 16-111.5, ComEd also explained why, in any event, the proposal also runs afoul of that Section’s provisions. *See* Section I.D *supra*. Even if these arguments are put aside, however, the EEAASR proposal still could not be adopted for the simple reason that it is far too speculative and undeveloped to be implemented.

A review of the EEAASR section of the IPA Plan admits as much. Three of the four brief pages addressing the proposal are devoted to background and aspirational material and to identifying “EEAASR Procurement Issues to Resolve.” Only one page attempts to lay out any substance to the proposal, but even this is far too inadequate and leaves important questions unanswered. Without significantly more specificity and supporting data from the IPA, there can be no reasonable way to conclude that incurring additional procurement costs (likely hundreds of thousands of dollars) to buy very small amounts of energy outside of the PJM market in which ComEd operates can be expected to lower, rather than raise, costs to ComEd customers.

Indeed, some of the same concerns identified by the Commission regarding the 2010 proposal are admittedly present in the 2014 proposal. For example, putting aside the issues previously discussed (*e.g.*, EEAASR is not a standard wholesale product), the proposal concedes, *inter alia*, that it remains to be determined how the proposal would avoid “overlap” with existing

energy efficiency programs offered under Sections 8-103 and 16-111.5B. Given that this concern was first identified by the Commission four years ago in its Order in Docket No. 10-0563, it is unlikely that the issue can be resolved in the near future. And, this is just one of many critical issues that would have to be resolved before moving forward. Others include “Vendor/Program Qualification”, “Product Definition”, “Credit Requirements and Non-Delivery Penalties”, and “Verification.”¹⁶ Indeed, the existence of so many serious and unresolved issues only further points to the plain conclusion that the EEAASR proposal, if it is to be considered at all, must be proposed under Section 16-111.5B and meet the requirements thereunder. It does not “fit” anywhere else.

Another key issue – largely ignored by the Plan – involves how the EEAASR proposal would work with PJM. ComEd assumes that, like its standard wholesale product suppliers, the EEAASR supplier would deliver MWs to ComEd’s PJM account, which would reduce the amount ComEd needs to purchase from the market for its supply customers. If this is not the case, however, ComEd’s fixed supply customers would receive no benefit for whatever payment is made to the supplier.

If this product is truly a pure energy efficiency proposal rather than a standard wholesale product delivered to ComEd’s PJM account, then it would need to be procured from only ComEd fixed supply customers in order to provide any value to the customers paying for the EEAASR. *See* discussion *supra*, at 17-18. This means the IPA, ComEd, or supplier would need to incur the expense of verifying that promised load reductions are delivered and that they are only from ComEd’s fixed supply customers (which means constant monitoring of customer switching). In this case, ComEd fixed supply customers would benefit directly by using less costly energy.

¹⁶ Plan, p. 71.

However, the price that could be paid for this energy would be significantly less than the market price. As shown in Appendix B to these Objections, it is actually the market price less the average cost of supply otherwise being paid by ComEd's customers. It is therefore unclear why the EEAASR proposal would be attractive to potential suppliers or save money for ComEd customers after all procurement and administration costs are considered.

F. The Plan Should Be Revised to Delete the EEAASR Proposal and Direct That Stakeholders Address the EEAASR Alternative Proposal in Workshops.

For all of the above reasons, procurement of energy efficiency as a supply resource under the EEAASR proposal should be rejected by the Commission for the 2015 IPA Procurement Plan. Rather, the Commission should direct that stakeholders take up the EEAASR Alternative proposal in the workshop process to be convened regarding TRC Test issues. The language changes to implement ComEd's proposal are shown in the redlined version of the Plan attached hereto as Appendix A.

II. MISCELLANEOUS ISSUES

A. Procurement of Solar Renewable Energy Credits.

The Plan recommends "a Spring 2015 procurement of Solar Renewable Energy Credits (SRECs) to meet each utility's [ComEd's and Ameren Illinois'] PV requirements for the 2015-2016 delivery year."¹⁷ ComEd has no process objections if the IPA proposes to follow the same process as it did in procuring renewable energy credits ("RECs") in 2012. However, as ComEd and Ameren Illinois noted in their Draft Plan comments, this will result in utility customers paying for more RECs than the amount targeted by Section 1-75(c) of the IPA Act, 20 ILCS 3855/1-75(c). As Ameren Illinois noted, the absence of a legal requirement to meet RPS sub-

¹⁷ Plan, p. 100 (footnote omitted).

targets once the overall target has been achieved, the cost of the above target RECs and the cost involved in holding a REC procurement event, raise the question of why holding such a procurement makes sense for utility customers.

B. Using Hourly Alternative Compliance Payments to Meet Distributed Generation Goals.

The Plan proposes that “utilizing the already collected, and otherwise unspent, hourly [Alternative Compliance Payment (“ACP”)] funds to allow the utilities to meet their [distributed generation (“DG”)] targets would be appropriate to further an aspect of the utilities’ RPS obligations.”¹⁸ ComEd supports this proposal. Further, with respect to the Plan’s proposal to obtain five-year contracts and the uncertainty regarding future funding, ComEd understands that the total amount of DG procured over the full five-year term will be paid for with the amount of hourly ACP funds currently available. The Plan also recommends approval of the first of three options presented in the draft Plan for DG procurement using hourly ACP funds.¹⁹ ComEd supports this proposal, which, of the options, is most aligned with the requirements of the IPA Act and past practices.²⁰ Even so, ComEd has identified certain language in the Plan related to the DG procurement that should be clarified to ensure compliance with the requirements of the IPA Act.

First, with respect to the 1 MW minimum, the Act requires that, “to minimize the administrative burden on contracting entities, the Agency shall solicit the use of third-party organizations to aggregate distributed renewable energy into groups of no less than one

¹⁸ Plan, p. 104.

¹⁹ Plan, pp. 105-107.

²⁰ In addition, because the Plan proposes to obtain five year contracts and future funding is uncertain, ComEd understands that the total amount of DG procured over the full five year term will be paid for with the amount of currently available hourly ACP funds.

megawatt in installed capacity.” 20 ILCS 3855/1-75(c)(1). Moreover, these “organizations shall administer contracts with individual distributed renewable energy generation device owners.”

Id. Put simply, these provisions clearly direct the IPA to undertake measures that ensure utilities will not have to administer numerous small contracts, each with different pricing terms. Instead, the aggregator would enter into and administer the individual contracts and pricing with the various suppliers being aggregated, and the aggregator would then sign a contract (of greater than 1 MW capacity) with the utility at a single price for the specified amount of MW won. The aggregator would then distribute the funds to the various suppliers represented by the aggregator.²¹

As such, any contract or contract term between the aggregator and utility that would provide for unit specific pricing or that would be for less than one megawatt in installed capacity would clearly be in conflict with the provisions of Section 1-75(c) of the IPA Act. To ensure the Plan is neither vague nor ambiguous regarding its compliance with these provisions, ComEd has included changes in the attached redline version of the Plan to provide further clarification.

Second, while the Plan proposes to procure DG RECs through a single procurement, in practice the Plan would create two separate procurements by “procuring on the basis of price within each individual market segment (<25kW, and 25kW to 2 MW).”²² This process is not only contrary to Section 1-56’s single procurement requirement, but also runs afoul of Section 16-111.5(e) of the PUA and Commission practice. Section 16-111.5(e) requires that bids be selected “solely on the basis of price” (220 ILCS 5/16-111.5(e)), and past Commission practice reflects consistent implementation of a single procurement for all REC types (*i.e.*, wind, solar

²¹ ComEd has no objection if the IPA, during its evaluation process, reviews all of the sub-bids of the aggregator and decides which of those are selected as winners, as long as the final contract between ComEd and the aggregator is for a single price and for a quantity of at least 1 MW.

²² Plan, p. 107.

and other). To date, all eligible bidders have been welcomed to participate, and the Procurement Administrator (“PA”) selects the lowest cost RECs available until the overall REC target is met or the budgeted funds are exhausted. Once the target is met at the lowest cost, the PA swaps out the highest cost REC selected so far with a higher priced REC of one of the statutorily mandated preferences. This process continues (giving equal weight to all mandated preferences) until these preferences are satisfied or the funds are exhausted. In this way, the PA is able to ensure that the overall renewable target is met and costs to the consumer are kept as low as possible while still achieving statutory preferences to the extent possible. Moreover, the Commission has expressly considered and approved this approach regarding preferences and priorities:

Having reviewed the statute and the arguments, the Commission agrees with Staff that *the highest priority under the IPAA is to meet the renewable energy resource standards with resources that are cost-effective*. Absent a clear indication in the statute that an option which is not cost-effective is to be favored over resources which are cost-effective, *the Commission believes it should err on the side of the cost-effective resources*.

Commonwealth Edison Co., ICC Docket No. 07-0528, Order (Dec. 19, 2007) at 61 (emphasis added).

Applying this law and past practice to the DG procurement contemplated in the Plan, the IPA should conduct a single procurement that includes the entire market segment, which would mean selecting the lowest cost DG RECs until the ComEd DG target of 13,194 RECs is met. Once this target is satisfied, the PA could then substitute higher cost <25kw RECs until this sub-preference is met or the funds are exhausted. ComEd has included changes in the attached redline version of the Plan to ensure the DG procurement is consistent with the law, as well as past Commission orders and practice.

III. CONCLUSION

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

Dated: October 6, 2014

Respectfully submitted,

Commonwealth Edison Company

By: 
One of its attorneys

Thomas S. O'Neill
Senior Vice President, Regulatory and Energy
Policy and General Counsel
COMMONWEALTH EDISON COMPANY
440 South LaSalle Street, Suite 3300
Chicago, Illinois 60603
(312) 394-7205
thomas.oneill@comed.com

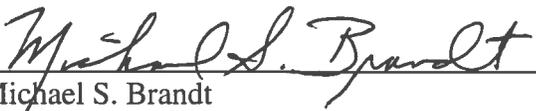
Mark R. Johnson
David M. Simon
Eimer Stahl LLP
224 South Michigan Avenue, Suite 1100
Chicago, Illinois 60604
(312) 660-7600
mjohnson@eimerstahl.com
dsimon@eimerstahl.com

Thomas J. Russell
10 South Dearborn Street, 49th Floor
Chicago, Illinois 60603
(312) 394-5400
thomas.russell@exeloncorp.com

Counsel for Commonwealth Edison Company

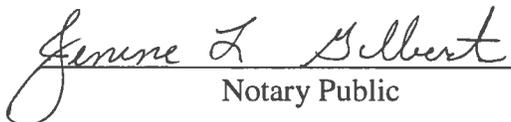
VERIFICATION OF MICHAEL S. BRANDT

I, Michael S. Brandt, first being duly sworn, depose and state that I am Manager, Energy Efficiency Planning & Measurement 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.



Michael S. Brandt

Subscribed and sworn to before
me this 3rd day of October, 2014.

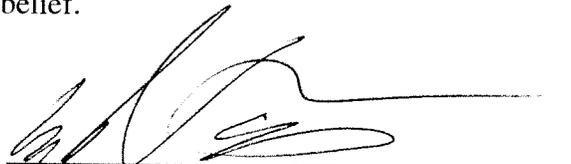


Notary Public



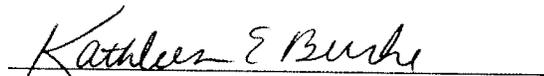
VERIFICATION OF SCOTT A. VOGT

I, Scott A. Vogt, first being 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.



Scott A. Vogt

Subscribed and sworn to before
me this 6th day of October, 2014.



Notary Public

