

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY :
 : No. 14-0588
Petition for Approval of the :
220 ILCS 5/16-111.5(d) Procurement Plan :

**BRIEF ON EXCEPTIONS OF
COMMONWEALTH EDISON COMPANY**

Commonwealth Edison Company (“ComEd”) submits this Brief on Exceptions (“BOE”) relating to the Administrative Law Judge’s Proposed Order served on November 13, 2014 (the “Proposed Order” or “PO”). Pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), 83 Ill. Admin. Code § 200.830, suggested replacement language is provided following each exception in legislative format.

ComEd generally finds that the Proposed Order skillfully navigates a variety of complex and emerging issues, and therefore has very limited exceptions.

EXCEPTION 1: THE PROPOSED ORDER’S RENEWABLE RESOURCES CONCLUSION SHOULD BE REVISED TO REMOVE THE SREC PROCUREMENT.

As both ComEd and Ameren explained in their Objections, Responses and Replies, the Renewable Portfolio Standard (“RPS”) requirement for the 2015-16 Plan year has already been met. Because the additional one-year Solar Renewable Energy Credits (“SREC”) procurement proposed by the Illinois Power Agency (“IPA”) is not required and will only serve to increase costs to customers, the Proposed Order should be revised to reject this proposed procurement. Proposed Order at 216-217, 225; Ameren Objections at 4-6; ComEd Objections at 21-22. If the Commission nevertheless decides to proceed with the SREC procurement, ComEd notes that the Proposed Order correctly concludes that the IPA’s proposal for a one-year SREC procurement rather than a five-year SREC procurement is the more prudent of these options. Specifically, a

one-year SREC procurement avoids the uncertainty regarding the level of funding that may be available in the future should customer switching levels vary significantly.

ComEd accordingly suggests the following replacement language for the following two paragraphs on page 274 of the Proposed Order:

The Commission will first turn to the IPA's proposal for a one-year SREC procurement which is opposed by ELPCS, ISEA, ComEd, and to a lesser extent by Ameren for different reasons. ComEd and Ameren contend that the SREC procurement is unnecessary and will result in utility customers paying for more RECs than the amount targeted by Section 1-75(c) of the IPA Act. Among other things, In addition, Ameren, ELPC and ISEA they argue that a one-year SREC procurement will do little to encourage the development of new solar facilities in Illinois. They also suggest it is inconsistent with the IPA's other procurement activities.

As the IPA correctly points out, it has competing statutory obligations to encourage the development of new solar facilities while assuring that it does so at a reasonable cost. Staff also correctly notes that there many ways in which government encourages the development of solar facilities. The Commission's primary concern with the ELPCS and ISEA proposal is the lack of stability in the funding source for this particular procurement. The Commission ultimately concludes, however, that the IPA's proposal for a one-year SREC procurement is unnecessary and will result in utility customers paying for more RECs than the amount targeted by Section 1-75(c) of the IPA Act because, as the overall RPS target has been achieved, there is no legal requirement to meet RPS sub-targets clearly supported by the record and should be approved.

EXCEPTION 2: THE PROPOSED ORDER'S CONCLUSION REGARDING A DISTRIBUTED GENERATION RENEWABLE ENERGY CREDITS PROCUREMENT USING HOURLY ALTERNATIVE COMPLIANCE PAYMENT FUNDS SHOULD BE REVISED.

As explained by both Ameren and ComEd, procurement process efficiencies could be gained by having the IPA procure distributed generation ("DG") Renewable Energy Credits ("RECs") with the value of the hourly alternative compliance payment ("hourly ACP") funds designated for that purpose rather than having the utilities hold separate procurement events.

Proposed Order at 217-218, 228; Ameren Objections at 6-7; ComEd Response at 13. While other parties were also intrigued by the efficiencies to be gained with this proposal, ultimately the Proposed Order rejected it based on Staff's view that transferring funds to the IPA to purchase RECs was inconsistent with the statutory requirement that the utilities use the funds to procure RECs. As ComEd explained in its Reply, however, the utilities could execute a simple contract with the IPA for the amount of RECs purchased by the IPA based on the hourly ACP funds.

ComEd and Ameren could simply contract to purchase RECs from the IPA up to the amount available in the hourly ACP funds collected from June 1, 2013 through May 31, 2014; the single price paid under this contract would reflect the total that the IPA would pay to suppliers under its contracts with them. This approach would still require the utilities to enter into contracts to purchase RECs for their customers (thus alleviating concerns about the statutory language), and would also address Ameren's and ComEd's concerns regarding the contract terms with DG suppliers – the utilities' contracts with the IPA would be for a single average price for the number of RECs delivered.

ComEd Reply at 16-17. This approach reduces procurement costs as well as allows prospective sellers the convenience of working with a single counterparty – the IPA. It also appears to resolve Staff's concern regarding the statutory language. This proposal is consistent with the requirements of the Act, and the Proposed Order therefore should be revised to incorporate ComEd's proposal.

In addition, ComEd maintains that the past Commission practice of inviting all eligible bidders to participate in a single procurement for renewables is the most appropriate. ComEd Objections at 23-24. 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.

The IPA, indeed, admits that ComEd's proposal could be a sensible approach to balancing competing statutory directives, yet both the IPA and Proposed Order go on to conclude that this "sensible approach" is not appropriate for this docket. IPA Response at 38-39; Proposed Order at 275-276. The Proposed Order, however, offers no reason for why Section 16-111.5(e) of the PUA and past Commission practice cannot or should not be followed in this docket. The Proposed Order thus should be modified as proposed by ComEd to provide for selection of bids first on the basis of price, using any remaining budget to then introduce a preference for systems below 25 kW in size.

ComEd accordingly suggests the following replacement language for the following three paragraphs on pages 275-276 of the Proposed Order and for the following paragraph on page 277 of the Proposed Order:

Pages 275-276

ComEd believes that the proposed bid selection process must be modified to select bids first on the basis of price, using any remaining budget to then introduce a preference for systems below 25 kW in size.

ComEd argues the IPA's approach would be in conflict with the provisions of Section 16-111.5(e) of the PUA ~~1-75(e) of the IPA Act~~. The IPA believes this could be a sensible approach to balancing competing statutory directives, but not for this procurement. For this proposed DG procurement, the IPA argues it is unclear whether available hourly ACP funds will be exhausted prior to the target number of RECs being procured. If the budget is exhausted before targets are met, the IPA is concerned ComEd's approach would result in a procurement exclusively determined on the basis of price.

The IPA does not believe ComEd's proposed approach harmoniously balances provisioning for "selection of bids on the basis of price" and a competing requirement that "to the extent available, half of the renewable energy resources procured from distributed renewable energy generation shall come from devices of less than 25 kilowatts in nameplate capacity." The IPA contends ComEd's approach may result in outcomes where system size plays no factor in any bid's selection, and could result in zero RECs procured from systems below 25 kW in size. The IPA believes in a more harmonious reading reflected in its proposed approach.

Having reviewed the IPA Act, the parties arguments, and the circumstances present for the proposed procurement, the Commission finds ~~the IPA's ComEd's proposal~~ the most reasonable. Consistent with past Commission practice, the bid selection process shall select bids first on the basis of price, using any remaining budget to then introduce a preference for systems below 25 kW in size. ~~That ComEd's proposal could easily result in a procurement from only facilities larger than 25 kilowatts is not consistent with the General Assembly's intent. As the IPA, suggests, the ComEd proposal may deserve consideration in future procurements given a possible change in circumstances. In this instance; however, the IPA's proposal must be adopted.~~

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Ameren recommends that the Commission order Ameren to transfer hourly ACP funds to the IPA, with the IPA acting as the contractual counterparty to the DG procurement. Both Staff and the IPA believe such a transfer of funds is not legal, and the IPA believes a better solution may lie in legislation to realign and streamline this statutory scheme. ComEd, however, has proposed that the utilities execute a

simple contract with the IPA to purchase RECs from the IPA up to the amount available in the hourly ACP funds collected from June 1, 2013 through May 31, 2014; the single price paid under this contract will reflect the total that the IPA will pay to suppliers under its contracts with them. This approach will still require the utilities to enter into contracts to purchase RECs for their customers, thus will be consistent with Section 1-75(c) of the IPA Act and Section 16-111.5 of the PUA, and will also address Ameren's and ComEd's concerns regarding the contract terms with DG suppliers – the utilities' contracts with the IPA will be for a single average price for the number of RECs delivered. This approach also will reduce procurement costs, allow prospective sellers the convenience of working with a single counterparty – the IPA, and ultimately benefit customers.~~It appears to the Commission that Staff has correctly interpreted the statutes in that Section 1-56 of the IPA Act governs renewable energy resource purchases by the IPA, while Section 1-75(c) of the IPA Act and Section 16-111.5 of the PUA govern renewable energy resource purchases by the utilities. The Commission concludes that ComEd's Ameren's proposal should cannot be adopted.~~

EXCEPTION 3: THE PROPOSED ORDER'S RENEWABLE RESOURCES SECTION SHOULD BE REVISED REGARDING THE RENEWABLES SUPPLIERS' PROPOSAL.

ComEd proposes two revisions related to the Renewables Suppliers' proposal to change contract terms. The first change corrects a sentence in the summary of ComEd's Position, which appears to have been inadvertently cut short. The second change revises the Proposed Order's Renewable Resources conclusion to correctly reflect the development of the standard hourly ACP contracts and establish a process for considering contract revisions in the future. The standard hourly ACP contracts are the result of a process that culminates in approval of the contracts by the IPA and Staff. Where changes have been required (*e.g.*, due to curtailment needs), the Commission has approved continued use of the standard contracts with modification to accommodate the curtailment need. *See Illinois Power Agency*, ICC Docket No. 12-0544, Order (Dec. 19, 2012) at 114-115 (approving modifications to address curtailment). Notably, in Docket No. 13-0546 the Renewables Suppliers proposed to change the settlement process

specified in the standard contracts, but the order correctly rejected the proposal because it was not sufficiently supported. *Illinois Power Agency*, ICC Docket No. 13-0546, Order on Rehearing (June 17, 2014) at 57. In the current proceeding, the Renewables Suppliers seek another modification to accommodate one of its members – to extend the delivery window of the hourly ACP REC contract. As ComEd explained, it has elected to maintain the June to May vintage that was reflected in the hourly ACP contracts from last year. Proposed Order at 229-230; Renewables Suppliers Objections at 4-7; ComEd Response at 21-22.

Given the challenges inherent in considering unique contract modifications from different suppliers, ComEd proposes that, in the future, each supplier that seeks changes to the standard contract direct its comments to the utility, IPA and Staff, rather than just the utility, and that the utility, IPA and Staff consider the comments and, if appropriate, work out changes to the standard contract (on behalf of all suppliers).

The fourth paragraph on page 229 of the Proposed Order thus should be modified as follows:

ComEd says the RS requests that their contracts with ComEd be changed to extend the delivery window for curtailed RECs to their benefit. ComEd argues that not only is this change inappropriate, the RS cites no authority in support of its proposal and, absent some showing that the contract is exempt from constitutional prohibitions regarding the State's interference or impairment of contracts, the Commission should reject this proposal. (ComEd Response at 21)

The second full paragraph on page 278 of the Proposed Order also should be modified as follows:

As the Commission understands it, the RS do not seek to have an existing contract modified; instead, ~~they~~ wants the Commission to intervene with respect to future contracts regarding curtailed RECs. ~~The Commission also finds it troubling that ComEd, apparently, does not communicate with the RS to obtain its input on contract terms and~~

~~conditions before having the contract approved by the IPA and Staff. The Commission notes this is not the first time this type of complaint has been raised by the RS. The Commission also appreciates, however, that there are numerous suppliers and, therefore, efficiencies to be gained in maintaining a standard contract. To balance these interests, in the future, the Commission each supplier that seeks changes to the standard contract shall direct its comments to the utility, IPA and Staff, rather than just the utility, and the utility, IPA and Staff shall consider the comments and, if appropriate, work out changes to the standard contract (on behalf of all suppliers) directs ComEd to obtain the input of the counterparty, in this case the RS, before having contracts concerning curtailed RECs approved by the IPA and Staff.~~

EXCEPTION 4: THE PROPOSED ORDER’S CONCLUSION REGARDING EEAASR SHOULD BE REVISED TO DELETE INCORRECT STATUTORY REFERENCES.

The Proposed Order correctly holds (on page 152) that “any energy efficiency programs to be undertaken by the IPA must be pursuant [to] Section 16-111.5B of the PUA.” Proposed Order at 152 (“Having reviewed the IPA Act and the PUA, the Commission concludes that any energy efficiency programs to be undertaken by the IPA must be pursuant [to] Section 16-111.5B of the PUA”). In the last two paragraphs on page 153, however, the Proposed Order refers to the pursuit of energy efficiency program proposals pursuant to “Sections 16-111.5 and 16-111.5B of the PUA.” Proposed Order at 153. Consistent with the conclusion stated on the previous page of the Proposed Order, these inadvertent references to Section 16-111.5 should be deleted so that the Proposed Order refers only to Section 16-111.5B of the PUA.

Accordingly, ComEd suggests the following replacement language for the last two paragraphs on page 153 of the Proposed Order:

The Commission concurs with those parties that suggest energy efficiency is a valuable tool and should be pursued as a matter of policy and appreciates the efforts of the IPA to pursue innovative ideas. The Commission also believes such efforts should be pursued pursuant to Sections ~~16-111.5~~ and 16-111.5B of the PUA. Because neither ComEd nor Ameren presented energy efficiency proposals consistent with the

IPA's stated objectives, it is not possible for the Commission to approve the IPA's alternative proposal at this time. That does not mean; however, that it should simply be dismissed.

The Commission directs the parties to commence workshops, coordinated by Staff, to pursue the IPA's alternative proposal. Among other things, those workshops should consider whether an additional RFP for energy efficiency programs will be necessary, the duration of any such programs, whether the IL-TRM should govern these types of programs, and how such programs should be evaluated. To the extent practical, the Commission directs ComEd and Ameren to propose energy efficiency programs consistent with the IPA's goals when each provides its energy efficiency proposals pursuant to Sections ~~16-111.5~~ and 16-111.5B of the PUA next year.

CONCLUSION

Based on the record and the arguments made herein, ComEd respectfully requests that the Proposed Order be revised as set forth in the exceptions above.

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Respectfully submitted,

Commonwealth Edison Company

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