

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	:	
	:	Docket No. 15-0541
Petition for Approval of the 2016 IPA	:	
Procurement Plan Pursuant to Section	:	
16-111.5(d)(4) of the Public Utilities Act	:	

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

TABLE OF CONTENTS

I. Power Procurement Strategy – Hedging Strategy (1.1).....2

II. The Action Plan – March 2016 Load Forecast (1.4)3

III. Incremental Energy Efficiency (7.1).....3

A. Policy Issues for Consideration in the 2017 Plan (7.1.4)3

B. ComEd Identification of “Performance Risk” (7.1.6.4)5

C. ComEd Programs Recommended for Approval (7.1.6.5)8

IV. Distributed Generation Procurement Process (8.4.1).....8

V. CONCLUSION.....9

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OF THE ILLINOIS POWER AGENCY**

Commonwealth Edison Company (“ComEd”) submits these Verified Objections (“Objections”) to the 2016 Electricity Procurement Plan (“2016 Plan”) filed by the Illinois Power Agency (“IPA”) with the Illinois Commerce Commission (“Commission” or “ICC”) pursuant to Section 16-111.5(d)(4) of the Illinois Public Utilities Act (“PUA” or “Act”) (220 ILCS 5/16-111.5(d)(4)). 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.

ComEd commends the IPA for the well drafted 2016 Plan, and is generally supportive of its major elements. As such, ComEd’s Objections are limited to correcting certain figures and responding to two key energy efficiency policy issues raised in this Plan.¹ *First*, the discussion of approving energy efficiency programs in next year’s 2017 Plan should be revised to conform to past Commission orders. *Second*, ComEd provides additional background regarding the “performance risk” issue associated with third-party vendors, and highlights critical policy

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.

concerns implicated by the proposal that utilities pay third-party vendors only after the independent evaluator determines final program savings. Because evaluation results are often not finalized until years after the vendor begins fronting program start-up costs, ComEd anticipates that delayed payment will have a significant chilling effect on participation in the request-for-proposal (“RFP”) process to procure third-party administered programs.

ComEd respectfully urges the Administrative Law Judges (“ALJs”) 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, 2015, and replies to responses be due October 30, 2015, along with any related testimony or affidavits.²

I. Power Procurement Strategy – Hedging Strategy (1.1)

With respect to Tables 1-1 and 7-7, the hedge percentages indicate the hedge level following the contemplated procurement events. For “Upcoming Delivery Year +1,” the Plan presents the final (Fall) targeted hedge amount as 50% while the beginning (Spring) hedge amount for that year is 25%. Because the IPA plans to procure half of the 25% increase in the

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.

Spring and half in the Fall (*i.e.*, approximately 12.5% in each procurement), the hedge value after the Spring 2016 procurement for “Upcoming Delivery Year +1” should be 37.5% rather than the 25% currently listed in the Plan.

II. The Action Plan – March 2016 Load Forecast (1.4)

Item (2) of Section 1.4’s Action Plan – which addresses the spring filing of updated load forecasts following Plan approval – should be revised to comport with the consensus-driven practice of past years. As reflected in the current 2015 Plan, the utilities are required “to provide an updated March 13, 2015 forecast which will be pre-approved by the ICC in this docket *subject to the March 2015 consensus of each utility, the IPA, the ICC Staff, and the Procurement Monitor.*” ICC Docket No. 14-0588, Final 2015 IPA Procurement Plan (April 28, 2015) at 5 (emphasis added). The 2016 Plan would circumvent the consensus process during the normal course, however, and only require consensus in the event an updated load forecast triggers a curtailment. Consistent with past practice, the Plan should be revised to apply the consensus process regardless of whether a curtailment is triggered.

III. Incremental Energy Efficiency (7.1)

A. Policy Issues for Consideration in the 2017 Plan (7.1.4)

With respect to next year’s 2017 Plan, the 2016 Plan raises the issue of “how Section 16-111.5B programs may be used to ‘expand’ a portfolio of Section 8-103 programs that have not yet been approved by the Commission.” 2016 Plan at 94. While this is not an issue for the 2016 Plan, the IPA suggests that this will be an issue for the 2017 Plan because the energy efficiency programs under Section 8-103 that will be in effect for the 2017 Plan’s delivery year will not be approved until early 2018, a month or two after the 2017 Plan is approved. Although not entirely clear, the 2016 Plan seems to suggest that the Commission could approve “expanded” Section

8-103 programs under Section 16-111.5B even if the Section 8-103 plan and its programs are not yet approved.

Section 16-111.5B, however, does not permit consideration or proposals of energy efficiency programs or measures without reference to the underlying “baseline” programs approved under Section 8-103. Rather, Section 16-111.5B is limited to “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... .*” 220 ILCS 5/16-111.5B(a)(3)(C) (emphasis added). In other words, programs or measures proposed under Section 16-111.5B cannot be considered in isolation, but rather are subject to review and approval in light of their relation to measures and programs already approved by the Commission as part of the Section 8-103 plan. The current Section 8-103 plan extends only through May 31, 2017 (*see* ICC Docket No. 13-0495), and the energy efficiency programs and measures to be offered beginning June 1, 2017 will not be known until the Commission enters its order approving the next triennial Section 8-103 plan in early 2018.

Indeed, the Commission already considered and ruled on this issue in ICC Docket No. 13-0546 in response to a proposal by the Attorney General that the utilities should prematurely present unapproved Section 8-103 programs in the procurement docket for purposes of considering programs to be approved under Section 16-111.5B:

The Commission does not understand how the AG expects utilities to know, with any degree of certainty, which programs the Commission will adopt for expansion before the Commission has entered an order pursuant to Section 8-103. In fact, the Commission itself cannot know that. While the statutory framework related to energy efficiency programs has arguably created an unfortunate situation, it is simply unfair to put the utilities in a situation where they must guess in one proceeding what the Commission will subsequently decide in another proceeding. The Commission suggests that an effective solution would be for the General Assembly to modify the existing framework to address the timing. The Commission, however,

cannot simply ignore the existing framework. The AG's proposal is rejected.

Illinois Power Agency, ICC Docket No. 13-0546, Final Order (Dec. 18, 2013) at 146-147. Because the Commission has already decided the issue and the General Assembly has not amended Section 16-111.5B, the 2016 Plan should be revised to conform to – rather than contradict – past Commission decisions, and encourage stakeholders to address this issue through the Stakeholder Advisory Group.

B. ComEd Identification of “Performance Risk” (7.1.6.4)

In its submission of the energy efficiency information and analyses required under Section 16-111.5B of the Act, ComEd identified six third-party administered programs that it considered to be “performance risks.” After excluding two of these programs on the grounds that one was duplicative and the other failed the total resource cost test (“TRC Test”), ComEd identified performance concerns regarding the remaining four programs. As summarized in the 2016 Plan, “the sales cycle for the applicable products in two of the bids is very slow and complex, one program that expands on an existing program has not currently expended its budget, and another program may rely on lists of customers receiving LIHEAP for marketing, and those lists are not available due to confidentiality provisions.” 2016 Plan at 103.

While these four programs exhibit some level of performance risk, the 2016 Plan nevertheless concludes that “Section 16-111.5B requires the IPA to include incremental ‘energy efficiency programs and measures it determines are cost effective..., meaning ‘that the measures satisfy the total resource cost test.’ As each of these measures passes the total resource cost test, it is the obligation of the IPA to include them in this procurement plan.” 2016 Plan at 103 (quoting 220 ILCS 5/16-111.5B(a)(4), (b)). The 2016 Plan goes on to observe, however, that the risks associated with these programs can generally be managed by the “pay for performance”

contracts used by the utilities with respect to these third-party administered energy efficiency programs. In other words, “under a pay for performance arrangement, the IPA understands risk of underperformance to rest with the winning bidders, and flawed program design will simply manifest itself in less payment for less performance.” *Id.* at 103.

While ComEd generally agrees with the IPA’s summary of the pay for performance contract structure, the IPA’s “understand[ing] that the utilities plan to make adjustments in RFP development to help ensure that any winning bidders may not be significantly compensated prior to demonstrating achieved savings” requires further clarification and consideration. *Id.* Although ComEd cannot speak for Ameren or any other stakeholder, ComEd notes that the proposal to withhold vendor payment is being advanced by Commission Staff (“Staff”) in ComEd’s pending Plan Year 6 reconciliation docket in conjunction with an unlawful disallowance proposed by Staff. *See generally* ICC Docket No. 14-0567. As explained below and reflected in Appendix A’s revisions, withholding payment could substantially shrink, if not shut down, the third-party administered programs.

In ComEd’s Plan Year 6 reconciliation docket, Staff has proposed, *inter alia*, two disallowances totaling nearly \$390,000 relating to two programs administered by third-party vendor Project Porchlight Inc. *See generally* ICC Docket No. 14-0567, Tolsdorf Dir., Staff Ex. 1.0 and Tolsdorf Reb., Staff Ex. 2.0. These programs represent winning bids in the statutorily-mandated RFP process that ComEd was required to conduct for purposes of procuring third-party administered energy efficiency programs – here, for the 2013 and 2014 Plans. As such, these proposed programs were reviewed by Staff, intervenors, and the Commission in the course of ICC Docket Nos. 12-0544 and 13-0546, no one objected to the programs, the Commission approved the programs, and the final orders required that ComEd move forward with funding these third-

party programs. *See generally Illinois Power Agency*, ICC Docket No. 12-0544, Final Order (Dec. 19, 2012) (“2013 Procurement Plan Order”) at 35-36, 268-272, 277; *Illinois Power Agency*, ICC Docket No. 13-0546, Final Order (Dec. 18, 2013) (“2014 Procurement Plan Order”) at 37-38, 205-206.

Because Project Porchlight did not ultimately deliver the promised energy savings, the pay for performance contract required Project Porchlight to return to ComEd any start-up costs or funds that ComEd had paid to Project Porchlight during the course of Plan Year 6. Project Porchlight unexpectedly and unforeseeably became insolvent early in Plan Year 7, however, and it was unable to perform under the contract and return the funds it owed. While Staff never claims (and could not claim) that it was imprudent for ComEd to fund the Project Porchlight programs approved and mandated by the Commission, Staff nevertheless argues that the unforeseeable insolvency of Project Porchlight should result in the disallowance of costs related to the Project Porchlight-administered programs and that ComEd should bear such costs. *See generally* ICC Docket No. 14-0567, Tolsdorf Dir., Staff Ex. 1.0 and Tolsdorf Reb., Staff Ex. 2.0. Staff’s extreme reaction to the lone vendor insolvency during seven years of implementing energy efficiency programs does not stop with the unlawful disallowance, however, and also includes the proposal that vendors not be paid until after the independent evaluator verifies the energy savings for the vendors’ programs ICC Docket No. 14-0567, Tolsdorf Reb., Staff Ex. 2.0, 7:147-154. This proposal appears to form the basis, in part, for the 2016 Plan’s observation that the utilities intend to revise their contracts to specify that they will withhold payment until energy savings are verified.

While ComEd strongly opposes Staff’s disallowance based on the well-settled law regarding the prudence standard, ComEd agrees that Staff’s disallowance, if adopted, would require utilities to refrain from paying vendors until final evaluation results are known. Put another

way, if utilities were to be blamed for events beyond their control related to implementing Section 16-111.5B and complying with Commission orders entered thereunder, the utilities will be forced to manage this risk by withholding vendor payment as proposed by Staff and the 2016 Plan.

The impact of withholding payment cannot be underestimated, however. Implementing Staff's and the 2016 Plan's proposal could effectively dismantle the third-party administered energy efficiency programs under Section 16-111.5B. Discontinuing payment of start-up costs and any in-progress payments to third-party vendors means that each vendor would be required to front all of its start-up and implementation costs for at least 15 months and then wait months or years for completion of the final evaluation process before receiving any payment. By making this process so costly for third-party vendors, ComEd expects that this approach would dramatically reduce participation in bidding through the IPA process, and thereby reduce energy efficiency offerings and savings contrary to the goals of the General Assembly set forth in Sections 8-103 and 16-111.5B.

C. ComEd Programs Recommended for Approval (7.1.6.5)

Consistent with the revised energy efficiency analyses ComEd submitted to the IPA on September 14, 2015, the paragraph beneath Table 7-6 should be revised to reflect savings attributable to eligible retail customers of "35,784" (rather than 35,812).

IV. Distributed Generation Procurement Process (8.4.1)

Finally, ComEd proposes limited revisions designed to clarify the meaning of certain terms or concepts. Of particular importance is ComEd's recommendation that a safeguard be added to avoid placing an undue burden on utilities associated with managing contracts involving prorated shares. As proposed in Appendix A, no more than one contract between the aggregators and utility may be below 1 megawatt because of proration.

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 5, 2015

Respectfully submitted,

Commonwealth Edison Company

By: 
One of its attorneys

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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.

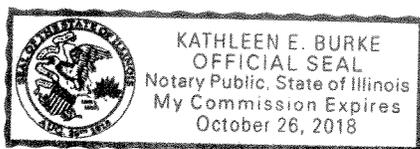


Scott A. Vogt

Subscribed and sworn to before
me this 20th day of October, 2015.

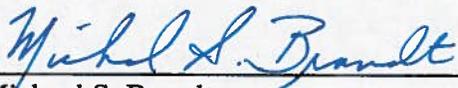


Notary Public



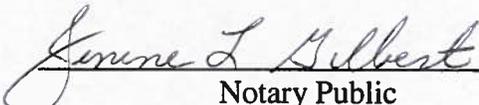
VERIFICATION OF MICHAEL S. BRANDT

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 2 day of October, 2015.



Notary Public

