

**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 RESPONSE TO THE  
OBJECTIONS TO THE PROCUREMENT PLAN  
OF THE ILLINOIS POWER AGENCY**

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Commonwealth Edison Company (“ComEd”), pursuant to Section 16-111.5(d)(3) of the Illinois Public Utilities Act (“PUA”) and the October 6, 2015 ruling of the Administrative Law Judges, submits this response (“Response”) to certain objections (“Objections”) to the proposed 2016 Power Procurement Plan (“2016 Plan”) filed with the Illinois Commerce Commission (“ICC” or “Commission”) by the Illinois Power Agency (“IPA”) on September 28, 2015. Below ComEd addresses certain Objections filed by the parties. The fact that ComEd does not respond herein to any Objection or argument of any other party does not imply that ComEd agrees with or accepts that Objection or argument.

**I. Renewables Procurement**

The Renewables Suppliers advance two proposals that maximize their financial interest while placing increased risk and cost upon customers. By requesting that the Commission prematurely foreclose the ability to curtail contracts if needed to comply with the statutory rate caps and then seeking significant increases of the procurement of renewable energy credits through 2021, the Renewables Suppliers’ proposals reflect an aggressive effort to increase their revenues at the expense of customer protections. Their proposals should be rejected.

**A. The Renewables Suppliers’ Proposal to Eliminate the Ability to Curtail Long-Term Contracts – and Thus Disregard the Statutorily-Established Rate Caps – Should Be Rejected.**

The Renewables Suppliers advance several alternative arguments, each of which is designed to accomplish the same goal – foreclose the ability to curtail long-term power purchase agreements for renewable energy resources and renewable energy credits in the event that mass switching to retail electric suppliers would cause the rate caps to be exceeded. As explained below, ComEd opposes their premature and unlawful recommendation that no curtailment be permitted to comply with the rate cap, as well as their alternative proposals, which have previously been rejected by the Commission.

**1. Background.**

Beginning with the factual and statutory framework in which this issue arises, the utilities execute long-term purchase power agreements with the suppliers whose bids are successful in the procurement process conducted by the IPA. *See generally* 20 ILCS 3855/1-75(c); 220 ILCS 5/16-111.5. With respect to the quantity of renewable energy resources that may be procured for a given planning year, the amount cannot exceed the budget established by the statutory rate cap. *See* 20 ILCS 3855/1-75(c)(2).<sup>1</sup> Because the number of eligible retail customers of a utility can suddenly and dramatically change due to switching under municipal aggregation programs, the long-term purchase power agreements were designed with a “curtailment” of the amount of resources to be procured in the event that the costs of the resources would exceed the cap. Thus, the curtailment provision is essential to ensure compliance with the statutorily-mandated cap and to protect customers.

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<sup>1</sup> “Eligible retail customers” are those retail customers of the utility that are eligible to take, and are taking, bundled supply service from the utility.

With respect to the planning year at issue in this docket (June 1, 2016 through May 31, 2017), no party anticipates at this time that a curtailment will be required. Even so, municipal aggregation has ushered in a very dynamic switching environment in ComEd's service territory, and the updated load forecasts required to be submitted in March 2016 will confirm whether these expectations were indeed correct. As explained below, however, the Renewables Suppliers are not content to allow this annual, statutory process to take its usual course, and instead ask the Commission to rush to a premature judgment now regarding the issue of curtailment by effectively eliminating the curtailment contingency in their contracts this year (even if this results in customers paying in excess of the rate cap). If this unlawful request is not granted, they propose alternative processes that are inefficient, costly, and previously rejected by the Commission. Even if these proposals were lawful, they are entirely unnecessary – the 2016 Plan again proposes to use the balance of alternative compliance payments collected on behalf of the utilities' hourly customers to purchase any curtailed renewable energy credits in an effort to mitigate the financial impacts of a curtailment if required.

**2. Prematurely foreclosing curtailment is unlawful.**

The Renewables Suppliers' primary proposal asks the Commission to preemptively order at this time that no curtailment will be authorized for the planning year. Renewables Suppliers Objections at 2. In other words, in the (unlikely) event that the March 2016 updated load forecasts demonstrated a need for curtailment, the Commission, IPA, utilities and stakeholders would be required, by order, to disregard this new information and force a smaller group of customers to pay the full costs of the Renewables Suppliers' contracts above the statutory rate cap. This proposal clearly violates Section 1-75(c)(2) and the curtailment provisions of the contracts, and should be rejected.

**3. The Commission's existing consensus process should be preserved.**

Barring a premature Commission order that would circumvent the statutory rate cap, the Renewables Suppliers revisit arguments they have admittedly advanced in prior years and that the Commission has already rejected. Specifically, the Renewables Suppliers propose that they be added to the consensus process the IPA has previously used to review the updated March load forecasts, and, in addition or in the alternative, the Renewables Suppliers request that the Commission permit parties to comment on the updated load forecasts culminating in another Commission determination. Renewables Suppliers Objections at 3-4. Yet, the Commission has already entertained arguments by the Renewables Suppliers to insert themselves in the review process of the updated March forecasts, and held that the existing process properly and fairly functions to ensure accurate and unbiased results because the participants (IPA, Procurement Monitor, Staff and the utilities) are experts in load forecasting and do not have a financial interest in the outcome of the load forecasts:

The Commission understands that the RS is concerned with the potential impact of any updated load forecast as it has an economic interest in the potential impact on LTPPA curtailment. On the other hand, the Commission is reassured that those traditionally responsible for preparing and reviewing the updated forecast have no economic incentive to produce, or allow to be produced, a biased forecast. The Commission notes the RS request a brief period of 7 to 14 days to submit comments on the updated forecast. Based on the August 15, 2013 posting of Draft Plan by the IPA, the RS had significantly more time to review the load forecasts than it proposes to review the updated forecasts. The nature of the RS' review, comments, and recommendations regarding the load forecasts suggest to the Commission that approving the RS' proposal would serve no meaningful purpose.

\* \* \* \*

The Commission also observes that the IPA is an independent state agency created specifically to develop the Procurement Plan as well as to implement the approved Plan. While the Staff,

Procurement Administrator, and Procurement Monitor participate in and oversee the IPA's activities, the IPA has responsibility for many of the procurement activities. Despite the concerns expressed by the RS, the Commission is comfortable the process it has previously used has been and will continue to be effective and successful.

*Illinois Power Agency*, ICC Docket No. 13-0546, Final Order (Dec. 18, 2013) at 198. In sum, the fact that a curtailment may be less likely during the present planning period does not warrant a change to a Commission-approved process that emphasizes technical expertise and an unbiased review process. The primary purpose of the revised March forecast is to purchase the correct amount of energy for customers, and the existing consensus process has proven very effective in accomplishing this goal. Indeed, customers may bear additional costs and risks if the updated forecast cannot be implemented due to an unwise and unnecessary change to the current efficient and unbiased process. For example, if the approved forecast turns out to be artificially high because additional forecasted switching was ignored, customers would be exposed to losses from unneeded/unhedged energy purchases that were made based on an erroneous forecast. For these reasons, the Renewables Suppliers' alternative arguments in this docket should be rejected.

**B. Proposals to Procure Additional Renewable Energy Credits through 2021 Should Be Rejected.**

The same financial motivations underlying the Renewables Suppliers' argument to foreclose curtailments for the 2016-2017 planning year appear to form the basis for their proposal to procure additional renewable energy credits through 2021. Joined by the Environmental Law and Policy Center ("ELPC"), the Renewables Suppliers observe that the current forecast shows a need to procure additional renewable energy credits to meet the Renewable Portfolio Standard requirements and that money appears to be available to pay for

such purchases. Renewables Suppliers Objections at 4-5. Like their curtailment proposal, however, the Renewables Suppliers ignore the very real risks posed by customer switching through municipal aggregation programs. When duly considered, it is clear that the IPA's 2016 Plan skillfully navigates the risks of switching and strikes the right balance between satisfying Renewable Portfolio Standard requirements and mitigating the risks of future curtailments.

That municipal aggregation has created a volatile switching environment in ComEd's service territory cannot be disputed. Following passage of the statutory provision authorizing municipal aggregation programs, ComEd's service territory saw over two-thirds of its residential and small commercial customers switch from taking supply service from ComEd to taking supply from a retail electric supplier. As a result, long-term renewable purchase power agreements executed in 2010 had to be curtailed to ensure that the statutory rate caps were not violated. Over the past year, however, some municipalities (including the City of Chicago) have suspended their municipal aggregation programs because of recent power price movements, and as a result returned customers to utility supply. This year illustrates how the forecast of future funds available for renewable energy credit procurements can and does change drastically from year to year.

In light of this history, the current funds identified by the Renewables Suppliers and ELPC for renewable energy credit purchases through 2021 cannot be considered "money in the bank" that will unquestionably be available. Renewables Suppliers Objections at 7. A substantial portion of these projected funds would disappear in the event that one or two large municipalities reestablished their municipal aggregation programs. It is this reality that the IPA has well managed in its 2016 Plan. Specifically, the Plan minimizes risk by restricting renewable energy credit purchases to a single year to meet the Renewable Portfolio Standard using the

current year's funds. For those multi-year purchases undertaken to meet the Renewable Portfolio Standard requirements, the IPA uses the known (and already collected) monies from alternative compliance payments (hourly alternative compliance payment funds and the Renewable Energy Resources Fund). ComEd commends the IPA on this balanced, well-designed process, and recommends that the Renewables Suppliers' and ELPC's proposal to disrupt this prudent approach be rejected.

## **II. Energy Efficiency – Third Party Administered Programs**

The 2016 Plan proposes a radical change to the funding of energy efficiency programs included in the Plan, that are administered by third parties whose bids prevailed in the request-for-proposals process. For the first time since utilities began implementing energy efficiency portfolios in 2008, the IPA Plan proposes that third-party vendors not be paid until years after they first incur start-up costs to offer their programs. 2016 Plan at 103. As confirmed by Staff's Objections, the Plan adopts a proposal made by Staff in its comments on the Draft 2016 Plan (and in testimony in ComEd's Plan Year 6 reconciliation proceeding). Citing only to the lone vendor insolvency that has occurred since 2008, Staff proposes to withhold payment from all vendors until evaluation results are final (often years after start-up costs are first incurred). Staff Objections at 10-11. ComEd's Objections explain how this extreme reaction could effectively terminate the third party-administered programs under IPA plans. ComEd Objections at 8.

To further clarify, Staff's approach is a drastic departure from vendor compensation practices under *both* Section 8-103 and Section 16-111.5B of the PUA. Contrary to Staff's vague insinuations that ComEd somehow better manages its Section 8-103 vendor contracts than its Section 16-111.5B vendor contracts, ComEd has long assisted its vendors who implement Section 8-103 programs by advancing payment for start-up costs and progress payments.

ComEd believes that these payment practices have contributed to the successful implementation of energy efficiency in Illinois.

Given the very real concerns regarding Staff's and the IPA Plan's proposal to withhold payment, it should not be hastily adopted at this time, and instead the parties should be directed to discuss the issue further in workshops – just as the Commission has done in past years with other complex energy efficiency issues. *See, e.g., Illinois Power Agency*, ICC Docket No. 14-0588, Final Order (Dec. 17, 2014) at 223-224 (directing the parties to further discuss the issues of energy efficiency as a supply resource, demand response induced pricing effects, and non-energy benefits). Energy efficiency workshops have consistently proven to be effective in obtaining consensus or determining a path for resolving a contentious issue. The 2016 Plan's incorporation of so many energy efficiency consensus items is a testament to the productivity of the workshop process, and ComEd believes that this process would be useful here to further discuss the impacts of withholding vendor payment for so long. Indeed, neither Staff nor the 2016 Plan addresses the potential impacts of their proposal.

Staff's vague proposal regarding unspecified "adjustments" to the statutory Total Resource Cost Test ("TRC Test") inputs to account for performance risk also supports a workshop process. Staff Objections at 12-13. The Commission has previously directed that TRC Test-related issues should receive fuller treatment in workshops rather than expedited procurement dockets. The Commission's order approving the 2015 Plan, for example, directed stakeholders to undertake workshops to discuss proposed changes to the TRC Test based on demand response induced pricing effects and non-energy benefits. *Illinois Power Agency*, ICC Docket No. 14-0588, Final Order (Dec. 17, 2014) at 157. Citing the expedited nature of the procurement dockets, the complex and statutory nature of the TRC Test, and that the Test also

impacts Section 8-103 (electric) and 8-104 (gas) energy efficiency programs, the Commission properly reasoned that TRC Test-related issues should be further addressed in workshops where the full universe of potentially impacted stakeholders can comment (*e.g.*, gas utilities and related stakeholders). *Id.* The same rationale holds true here with respect to the review of third-party bids, and perhaps even more so given that Staff directs its criticism at “ComEd and stakeholders.” Staff Objections at 12.

Finally, ComEd notes that Staff’s Objections appear to propose a fundamental – and costly – shift in how the third-party administered programs are managed. To be clear, Section 16-111.5B requires that the utilities conduct a Request for Proposal (“RFP”) process and prepare the required analyses for IPA and Commission review of the third party-administered programs, which, by definition, will be run by third parties if approved. 220 ILCS 5/16-111.5B. For ComEd’s service territory, ComEd works with key stakeholders from the SAG to screen and review the bids received under the RFP process. Every program is reviewed by this group, and any participant may (and often does) reach out to the vendors to question or seek clarification regarding a given program’s assumptions.<sup>2</sup> As a further backstop, the contracts are designed as pay-for-performance, which means that the vendor will not be fully compensated under the terms of the contract if the vendor does not deliver the entire amount of promised kilowatt-hour savings. This feature eliminates virtually all of the performance risk identified by Staff, except for a rare case where a vendor becomes insolvent or steals funds. Indeed, over the past seven years of implementing programs, ComEd knows of only one such instance, which is the insolvency cited by Staff.

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<sup>2</sup> ComEd appreciates that Staff contributed to the process this year through its data requests, which identified an error with measure life assumptions for one program.

Contradicting the very nature of a *third party-run* program, however, Staff's Objections contemplate an expanded, Big Brother role for the utilities under which they are to leave no stone unturned. Staff Objections at 13. In Staff's view, utilities and stakeholder should undertake massive discovery efforts in very short timeframes to verify every figure, assumption, and detail of the vendor's proposal and thereafter monitor, manage, and supervise every step of implementation, all the while withholding any payment from the vendor. The costs associated with achieving the staffing levels to implement Staff's proposals would be substantial, of course, and it is unclear how the benefits could ever outweigh the costs. Given that the current Plan Year 8 budget for Sections 8-103 and 16-111.5B energy efficiency programs is over \$260 million, a single vendor insolvency in the past seven years amounting to \$390,000 (in Plan Year 6) would not seem to justify the hundreds of thousands of dollars in annual expense contemplated by Staff. What is justified at this time is further discussion through workshops about third party-administered programs and what changes, if any, could be made without dismantling energy efficiency programs under Section 16-111.5B.

### **III. Miscellaneous**

#### **A. Procurement of Solar Renewable Energy Credits**

The Plan recommends "a spring 2016 procurement of RECs [SRECs] to meet each utility's [ComEd's and Ameren Illinois'] requirements for the 2016-2017 delivery year." 2016 Plan at 127. However, as Ameren Illinois noted in their Objections, this will result in utility customers paying for more renewable energy credits than the amount targeted by Section 1-75(c) of the IPA Act, 20 ILCS 3855/1-75(c). Ameren Objections at 21. Specifically, the absence of a legal requirement to meet Renewable Portfolio Standard sub-targets once the overall target has been achieved, the cost of the above-target renewable energy credits, and the cost involved in

holding a renewable energy credit procurement event, raise the question of why holding such a procurement makes sense for utility customers. The sub-targets are relevant when constructing the plan to meet the overall RPS target, but not after the overall goal has been achieved.

## **B. Distributed Generation Renewable Energy Credits Procurement**

The IPA recommends a procurement term of five years for distributed generation renewable energy credits in early summer of 2016 using renewable funds previously collected from real time pricing customers. 2016 Plan at 13. These funds are currently held separately by each utility (ComEd and Ameren Illinois) in a liability account.

Because the IPA is also pursuing supplemental solar renewable energy credit procurements using the Renewable Energy Resources Fund and will act as the contractual counterparty with suppliers, Ameren Illinois' Objections recommend that the IPA (rather than utilities) should also act as the contractual counterparty with suppliers in the distributed generation renewable energy credit procurement proposal in the IPA Plan. Ameren Objections at 22. ComEd agrees with Ameren Illinois' recommendation that doing so would streamline the procurement process and the administration of resulting contracts.

ComEd also agrees with Ameren Illinois that in order to compensate the IPA for distributed generation renewable energy credit expenses under its contracts, each utility (Ameren Illinois and ComEd) would enter into a supplemental agreement with the IPA whereby each utility would use prior collections from real time pricing customers to reimburse the IPA for contractual expenditures. Ameren Objections at 22.

#### IV. CONCLUSION

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

Dated: October 20, 2015

Respectfully submitted,

Commonwealth Edison Company

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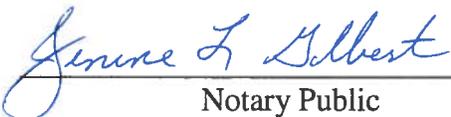
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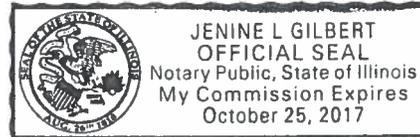
**VERIFICATION OF MICHAEL S. BRANDT**

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 Response to 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 20th day of October, 2015.

  
\_\_\_\_\_  
Notary Public

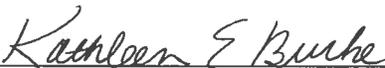


**VERIFICATION OF SCOTT A. VOGT**

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 Response to 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.

  
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Scott A. Vogt

Subscribed and sworn to before  
me this 16<sup>th</sup> day of October, 2015.

  
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Notary Public

