

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 REPLY TO CERTAIN RESPONSES TO 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 reply (“Reply”) to certain responses (“Responses”) to the objections (“Objections”) to the proposed 2016 Power Procurement Plan (“2016 Plan”), which the Illinois Power Agency (“IPA”) filed with the Illinois Commerce Commission (“ICC” or “Commission”) on September 28, 2015. Below ComEd addresses particular issues raised by the parties in their Responses. 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. ENERGY EFFICIENCY (7.1)

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

In its 2016 Plan, the IPA invited parties’ comments “concern[ing] 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. As the 2016 Plan went on to note, this will be an issue with next year’s 2017 Plan because the Commission will not issue its order

approving the next triennial energy efficiency plan under Section 8-103 until over a month after the Commission enters its order approving the 2017 Plan. 220 ILCS 5/8-103(f). Put another way, this timing issue frustrates Section 16-111.5B's requirement that the IPA Plan's energy efficiency programs be new or expanded programs that are incremental to those approved under Section 8-103 because the Section 8-103 programs will not be known at the time the Section 16-111.5B programs must be approved. 220 ILCS 5/16-111.5B(a)(3)(C).

ComEd explained in its Objections that the Commission has previously considered this issue, and ruled that it cannot approve expanded IPA energy efficiency programs in the absence of the baseline Section 8-103 programs. ComEd Objections at 3-5. Moreover, the Commission has acknowledged that this timing issue was created by the statutory framework and, ultimately, requires a legislative solution. *Id.* at 4-5; *Illinois Power Agency*, ICC Docket No. 13-0546, Final Order (Dec. 18, 2013) at 146-147. As a result, ComEd suggested in its Objections that the parties explore in workshops whether there might be other options for proposing energy efficiency under Section 16-111.5B for the 2017 Plan. ComEd Objections at 5.

In its Response, the IPA expressed appreciation for ComEd's recommendation that the issue be further explored in workshops, but found it inconsistent with ComEd pointing to the ICC's prior order concluding that parties' options were extremely limited without a legislative fix. IPA Response at 16. Far from being some sort of empty gesture, however, ComEd intended that the proposed workshops would consider the very sorts of proposals or concepts that the IPA posits in its Response (*i.e.*, some sort of stipulation or conditional approval). Indeed, key stakeholders like the Office of Attorney General are not participating in this docket, but would likely present a distinct point of view on the matter. At bottom, ComEd understands the

constrained position in which the IPA and parties find themselves, and shares the goal of exploring various paths for moving forward with energy efficiency in the face of legislative inaction on the timing issue. Importantly, the parties still have time to work through potential solutions to this issue, and it need not be decided now in the absence of key energy efficiency stakeholders' input. The Commission will consider the approval of any Section 16-111.5B energy efficiency programs for the 2017 Plan next fall, assuming currently pending legislation does not obviate the need for such approval.¹

B. Review of Ameren Illinois Total Resource Cost (“TRC”) Analysis (7.1.5.2)

In its Response, Staff proposes for the first time that Ameren should include “[c]osts for IPA programs that are not incremental to any particular program” “in its energy efficiency assessment submittal as a line item.” Staff Response at 13. While Staff correctly concedes that “particular programs should be reviewed without considering these costs” because the utility will incur the costs regardless of the number of programs offered, Staff nevertheless claims that the information “can be considered in the rate impact analysis, and so that the Commission is aware of such costs.” *Id.* It is unclear, however, what Staff means by “rate impact analysis,” and the Commission is otherwise made aware of (and able to review) these costs every year through the utilities’ annual reconciliation filings. While the Commission should reject this untimely proposal solely on the grounds that it was not raised until Staff’s Response, the proposal also warrants dismissal because it would impose additional and unnecessary reporting that is duplicative of what is already provided to the Commission in the annual reconciliation process.

¹ Amendment 1 to Senate Bill 1879, for example, would remove the procurement of energy efficiency under Illinois Power Agency procurement plans. Am. 1 to S.B. 1879, 99th Gen. Assembly (Ill., filed March 19, 2015).

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

In the 2016 Plan, the IPA noted that it “underst[ood] 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.” 2016 Plan at 103. As ComEd explained in its Objections and Response, however, it did not propose to delay vendor compensation, and believes that such an approach would be ruinous for IPA energy efficiency programs. Rather, the IPA Plan appeared to pick up the concept from Staff’s initial comments on the Draft 2016 Plan, which is an extension of Staff’s proposed disallowance of ComEd’s Plan Year 6 costs associated with the insolvency of a vendor implementing Commission-approved IPA energy efficiency programs. *See generally* ICC Docket No. 14-0567; ComEd Objections at 5-8; ComEd Response at 7-10.

In its Response, the IPA indicates that it has come to more fully understand the extent of Staff’s proposal and the serious issues associated with delaying payment to vendors for years. Accordingly, the IPA now “concur[s] with ComEd that this would have a chilling effect on third-party energy efficiency programs in Illinois and would badly frustrate the statutory requirement that IPA procurement plans ‘fully capture the potential for all achievable cost-effective savings.’” IPA Response at 10. The IPA, moreover, strongly indicated its support for the existing, prudently designed “pay-for-performance” contracts used by the utilities to minimize risks to customers:

While in the world of regulatory theory it would be nice to insulate ratepayers from any and all risks, some businesses will inevitably fail, and pay for performance contracts are a well-established, reasonable, and pragmatic way to minimize ratepayer exposure to performance risk. Instead of throwing out these programs as advocated by Staff, the IPA believes that the approval of programs

by the Commission in this proceeding should provide participating utilities with firm confidence to move forward in contracting with the bidders of the selected programs. Through this proceeding, the Commission may wish to provide clarity on the extent to which approval of programs should inherently be considered approval of prudent expenditures if the resulting contracts contain appropriate pay for performance provisions which have generally been demonstrated to safeguard ratepayers from performance risk. Approved programs have the demonstrated potential to create savings and provide benefits exceeding their costs, and that potential [] should not be unreasonably [] withheld from customers.

Id. ComEd agrees with the IPA's Response, and joins the IPA in its recommendation that the Commission provide clarity and assurance to utilities regarding their funding and cost recovery of Commission-approved, third-party administered programs.

To be clear, Staff's suggestion here and in Docket No. 14-0567 (where this issue originated) is premised on an end run around the well-established prudence and reasonableness standard. "Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made When a court considers whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible." *Illinois Power Co., v. Illinois Commerce Comm'n*, 339 Ill. App. 3d 425, 428, 435 (5th Dist. 2003) (internal citations omitted). As explained in the IPA's Response and ComEd's Objections and Response, the pay-for-performance contracting used by the utilities under Section 16-111.5B is a sound, prudent method for protecting customers from performance risk while also ensuring that the General Assembly's directive to implement third-party energy efficiency programs is not frustrated. The process encourages achievement of additional energy savings and growth in the energy efficiency economy, including the participation of new

entrants, while also ensuring that winning bidders deliver the energy savings promised under the programs. If a vendor fails to deliver some or all of the promised savings, the vendor is contractually bound to pay back funds it has received to implement the program. ComEd Objections at 7; ComEd Response at 9.

Yet, Staff is not satisfied to abide by the long standing prudence standard, and instead proposes hindsight review of the vendor's performance without any payment until final evaluation results are received – years after startup costs are incurred. These unheard of payment delays would likely deter any third party implementation of energy efficiency programs under Section 16-111.5B – a fact that Staff never refutes. Indeed, Staff does not (and cannot) cite to any examples of the sort of payment delays it proposes, nor does Staff cite to any law supporting its proposal to withhold judgment and payment until long after a plan year concludes. This is because Staff's proposal would require a change to Illinois law permitting hindsight review of costs incurred by utilities.

Putting aside these legal considerations, the folly of Staff's imprudent proposal can best be illustrated by a simple, real world example. If Staff's proposal were applied to new home construction, homes would rarely be built. Builders cannot afford to front construction costs for months or years (to pay for materials, employees and subcontractors) while waiting to receive the entire payment for the home only after the home passes the final inspection. Of course, this is not the way that construction operates, and the home purchaser is required to provide payments to the builder as construction progresses (whether out of the purchaser's pocket or through a loan). Issues regarding the builder's nonperformance, moreover, are typically

governed by the purchase contract. Contracting with third-party vendors to build and implement energy efficiency programs should be treated no differently.

ComEd also strongly opposes Staff's mischaracterization of the record. Specifically, Staff suggests that ComEd itself favors delaying vendor payment if all of the risk for cost recovery rested upon ComEd, implying that ComEd proposes some sort of double standard. Staff Response at 14-15. This is an odd claim, however, given that the proposal for hindsight review originated with Staff, and ComEd only raised the issue of delayed payment as the logical outcome of Staff's unlawful change to an after-the-fact review. Indeed, ComEd has opposed Staff's proposals throughout Docket No. 14-0567 and this docket. The fact that ComEd has acknowledged that it would be forced to withhold payment to vendors in the event Staff were permitted to engage in hindsight review (and it should not be) does not impugn ComEd in any way. It is, indeed, the reality of an after-the-fact approach to cost recovery, which would cause great harm to the IPA energy efficiency programs and is not lawful under Illinois law.

II. RENEWABLE ENERGY RESOURCES

A. The Action Plan (1.4)

In their Objections, the Renewables Suppliers proposed that the Commission prematurely determine, in its December 2015 order (months before the updated load forecasts are submitted in March 2016), that no curtailment will be required for the 2016-2017 delivery year at issue in this docket. Renewables Suppliers Objections at 2-3. In addition, or in the alternative, the Renewables Suppliers recommended that they be added as a participant to the March 2016 review process of the updated load forecasts or that the Commission permit additional comment on the updated forecasts, culminating in another Commission order. *Id.* at 3. Wind on the Wires

was the lone party to support the Renewables Suppliers' proposals. Wind on the Wires Response at 3-5.

The IPA, Staff, and Ameren filed Responses that identified and amplified many of the concerns reflected in ComEd's Response. IPA Response at 18-25; Staff Response at 2-6; Ameren Response at 4-6. In particular, they too highlighted that the statutory rate cap precludes the Commission from now determining that no curtailment will be required. As Staff observes, the "Commission faces a legislative mandate to protect ratepayers against rate increases due to renewable resource procurement in excess of those increases permitted by statute. That mandate is not diminished during the 2016-2017 plan year by the admittedly lower probability that Long-Term Power Purchases Agreements (LTPPA) curtailments will be necessary to bring about that protection." Staff Response at 3. *See also* IPA Response at 23.

The IPA, Staff, and Ameren further noted that the March process instituted to review updated load forecasts has been in place since 2009, and the Commission has previously rejected the Renewables Suppliers' attempts to insert themselves in that process. As the IPA notes, "the existing safeguard of Staff, IPA, and Procurement Monitor approval is sufficient to prevent an unnecessary curtailment. Unlike the Renewable[s] Suppliers, who ... have vested economic interests, each of these entities has an established statutory duty to ensure that statutory directives related to the procurement of both energy and renewable energy resources are met." IPA Response at 25. With respect to the utilities' participation, moreover, the IPA observes that "there is simply no evidence that the proven process for updated load forecast approval and curtailment determination" has been insufficient to guard against any alleged utility bias. *Id.* Indeed, the Commission has previously held that "the utilities have extensive experience and

expertise in the area of load forecasting and the utilities have no economic incentive to develop a biased load forecast. The Commission believes actual experience has proven these observations true and AIC and ComEd have performed quite well in developing load forecasts.” Docket No. 13-0546, Final Order (Dec. 18, 2013) at 197.

B. Renewable Resources Availability and Procurement (8.1-8.2)

Related to their effort to foreclose the risk of curtailment, the Renewables Suppliers’ Objections further sought to maximize their financial interest by proposing additional procurement of renewable energy credits under five-year contracts despite the significant switching (and therefore funding) uncertainty over the same five-year horizon. Renewables Suppliers Objections at 6. The Environmental Law and Policy Center’s (“ELPC”) Objections also proposed additional procurement of renewable energy credits. ELPC Objections at 3. In their Responses, neither the Renewables Suppliers nor ELPC offered anything new in support of their proposals, although the Renewables Suppliers urged caution with respect to ELPC’s more aggressive procurement proposal given the switching and curtailment uncertainty. Renewables Suppliers Response at 1-5; ELPC Response at 1-5.

Again, the IPA’s and Ameren’s Responses joined ComEd in opposing the risky procurement strategy proposed by the Renewables Suppliers and ELPC, which ignores the very real risks of switching and curtailment that can dramatically slash the funds available to pay for these long term contracts. As the IPA explains:

Section 1-75(c)(1) of the IPA Act provides that an increasing portion of the load requirements of eligible retail customers (i.e., residential and small commercial customers taking supply service from the utility, and not from an alternative supplier) be met through the procurement of renewable energy resources. (See 20

ILCS 3855/1-75(c)(1)). For the upcoming 2016-2017 delivery year, that amount is 11.5%, and it increases by 1.5% for each delivery year thereafter until 2025. Section 1-75(c)(2)(e) also specifies the methodology for determining the maximum amount that may be spent on renewable energy resource procurement pursuant to this section: a 2.015% rate impact cap based upon the greater of 2007 or 2011 electric rates.

Because this section concerns only eligible retail customer load, both the renewable energy resource procurement targets (the actual quantity of renewable energy resources to be procured to satisfy the law's targets) and the budget available for such procurements (sometimes referred to as the renewable resources budget, or "RRB") are impacted by customer switching between utility service and alternative supplier service. More customers taking supply from alternative suppliers, as happened when a wave of municipalities adopted municipal aggregation resolutions and entered into opt-out municipal aggregation contracts, reduces both the quantity of resources needed to be procured and the budget available for their procurement.

IPA Response at 19-20. As a result, ELPC's claim that a "significant surplus of available funds" exists for its proposed procurement is purely speculative (ELPC Objections at 2) – no one knows what amount of funds will be available in future years.

As the IPA, Ameren and ComEd also pointed out in their Responses, the risk of switching and curtailment is very real – indeed, curtailment of contracts has already been required due to switching under municipal aggregation programs. This is why the IPA's 2016 Plan continues to cautiously propose "only one-year contracts to meet only the upcoming delivery year targets using the renewable energy resources budget." IPA Response at 21. The IPA clarifies, however, that this strategy does not result in the IPA "fall[ing] significantly short" of renewable energy resources compliance targets in future years, as ELPC claims. *Id.* at 22. Rather, the "[t]ables included in the IPA's procurement plan simply show resources currently under contract relative to a future year's projected compliance goal. They say nothing of future

IPA procurements stemming from future IPA procurement plans. The IPA is not projecting ‘falling short’ of any targets; it is merely deferring decisions on how best to meet future years’ targets to future years’ plans, at which time it will have better information on available funding and procurement target amounts.” *Id.* (emphasis in original).

III. DISTRIBUTED GENERATION RENEWABLE ENERGY CREDIT PROCUREMENT (8.3-8.4)

In its Objections, ComEd proposed revisions to the 2016 Plan to clarify that the contracts utilities execute with aggregators must be at least 1 megawatt (“MW”) in size, but the overall contract can include both renewable energy credit product sizes specified in Section 1-75(c) (*i.e.*, less than 25 kilowatts (“kW”) and 25 kW to 2 MW). ComEd Objections at 8; App. A at 137. ComEd’s proposed changes would also permit one contract with the aggregators to be below 1 MW to accommodate any balancing the IPA may need to undertake between the utilities. *See id.* ComEd offered these proposals in conformance with Section 1-75(c) of the IPA Act, which provides 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 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.*

Below ComEd replies to the Responses of ELPC and the IPA on this issue.

Reply to ELPC. ELPC appears to have misinterpreted ComEd’s proposed revisions regarding minimum contract size and pricing. Rather than requiring bidders to submit bids of at least 1 MW in size for each renewable energy credit product size (less than 25 kW and 25 kW to 2 MW), ComEd’s suggested change is that aggregator contracts be for at least 1 MW in size.

The contracts can contain both renewable energy credit product sizes (less than 25 kW and 25 kW to 2 MW), but would include a single blended price for renewable energy credit products less than 25 kW and a single blended price for renewable energy credit products 25 kW to 2 MW. Having one price for all renewable energy credit product sizes under contract, as the 2016 Plan proposed, can create inequity between the parties to the contract because the price for renewable energy credit products less than 25 kW is likely to be greater than the price for renewable energy credit products 25 kW to 2 MW.

For example, assume the IPA awards a contract with a single blended price of \$150 per renewable energy credit based on the expectation that 50% of the renewable energy credits delivered would be less than 25 kW at a price of \$200 per renewable energy credit and 50% of the renewable energy credits delivered would be between 25 kW to 2 MW at a price of \$100 per renewable energy credit. If the actual deliveries under the contract were 30% from the less than 25 kW product size and 70% from the 25 kW to 2 MW product size, then customers would be paying more to the aggregator than the effective value of the renewable energy credits received (*i.e.*, paying an average of \$150 per renewable energy credit for an average value of \$130 per renewable energy credit). The reverse could happen as well, with the winning aggregator being underpaid under a single blended price for all renewable energy credit product sizes, which would leave the aggregator with too little in collected funds to pay the distributed generation systems that they have aggregated.

To avoid these inequities and any potential gaming of bids, ComEd's proposal for a single blended price *per renewable energy credit product size rather than per contract* will ensure that both parties to the contract will be treated fairly.

Reply to the IPA. The IPA suggests that the 1 MW threshold apply only to the IPA’s solicitation and bidding process, and should not extend to the contracts executed between utilities and aggregators. IPA Response at 26. The IPA’s view, however, contradicts the statutory mandate to avoid burdensome contract administration. “[T]o 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 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.

The Commission also addressed this matter in the 2015 Plan proceeding, and approved the requirement that contracts must be no less than 1 MW in size:

Additionally, the IPA proposes that aggregators may contract with system owners at different REC price points and systems may be selected at different price points, but with a single blended average REC price for an aggregator’s contract with ComEd. The IPA suggests this may better balance the need to promote small system participation while alleviating administrative burdens on the utilities.

In its Reply, ComEd states assuming this means that the contract between the aggregator and utility reflects a minimum of 1 MW for a single price (derived from “blending”), ComEd says this is the position it advocated in its Objections and Response. ComEd says the aggregator construct facilitates small contract amounts and varying prices between aggregators and suppliers. It appears to the Commission that the IPA and ComEd are now in agreement on this issue; and the Commission hereby approves that agreement for purposes of this Plan.

Illinois Power Agency, ICC Docket No. 14-0588, Final Order, (Dec. 17, 2014) at 288 (emphasis added).

The wisdom of consistently applying the statutory and Commission-approved 1 MW threshold to bids and contracts can be demonstrated through a brief example. While a number of aggregators may submit bids of 1 MW to the IPA, the bids may contain many projects that are unacceptable due to price or technical reasons, resulting in a contract that is merely a fraction of 1 MW. As a result, the IPA's proposal would lead to utilities having to execute multiple small contracts, each of which is well under 1 MW. This result thus does not "minimize the administrative burden on *contracting entities*", as required by the IPA Act. 20 ILCS 3855/1-75(c)(1) (emphasis added).

Consistent with ComEd's Objections, Section 1-75(c)(1) and the Commission's prior order, the Commission should again confirm that the minimum contract size for distributed generation renewable energy credits is 1 MW.

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 previously filed Objections and Response.

Dated: October 30, 2015

Respectfully submitted,

Commonwealth Edison Company

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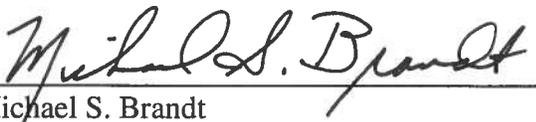
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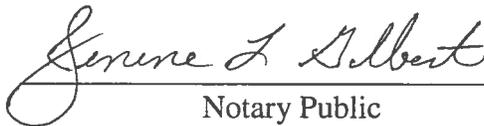
VERIFICATION OF MICHAEL S. BRANDT

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 Reply to Certain Responses 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 28th 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 Reply to Certain Responses 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.



Scott A. Vogt

Subscribed and sworn to before
me this 28th day of October, 2015.



Notary Public

