

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

ILLINOIS POWER AGENCY :  
 : Docket No. 16-0453  
Petition for Approval of the 2017 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**

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**COMMONWEALTH EDISON COMPANY'S  
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OF THE ILLINOIS POWER AGENCY**

Commonwealth Edison Company (“ComEd”) submits these Verified Objections (“Objections”) to the “2017 Power Procurement Plan” (“2017 Plan” or “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 2017 Plan, and is generally supportive of its major elements. As such, ComEd’s Objections are limited to responding to a key energy efficiency policy issue and correcting certain figures.<sup>1</sup> In brief, it is critical that the Commission provide clear and detailed guidance regarding the contract terms and conditions that should apply to the utilities’ contracts with energy efficiency vendors. Because of the uncertain regulatory policy regarding these contracts, ComEd also requests that the Commission approve ComEd’s

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<sup>1</sup> 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.

proposed contract templates, which it has attached to these Objections.

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 supports the IPA’s proposed schedule, as set forth in its Petition.<sup>2</sup>

**I. Energy Efficiency Vendor Contracting (Sec. 9)**

**A. Regulatory Uncertainty Following Commission Orders in ICC Docket Nos. 14-0567 and 15-0541**

ComEd appreciates the Plan’s thoughtful and important discussion regarding the ongoing issues associated with third-party energy efficiency programs and pay-for-performance contracts. During last year’s proceeding to approve the IPA’s 2016 Procurement Plan in Docket No. 15-0541, the parties addressed issues associated with underperforming third-party vendors, which was prompted by the Commission Staff’s proposed disallowance in a separate docket (Docket No. 14-0567) regarding costs associated with an IPA energy efficiency program vendor that unexpectedly became insolvent. While Staff proposed that utilities withhold payment from the vendors until final evaluation results are known, the Agency, ComEd, and others cautioned

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<sup>2</sup> 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.

that this approach could have a chilling effect on vendors' participation in IPA energy efficiency programs. Indeed, evaluation results can take years to finalize, which would leave the vendors without payment during this time. In its order in Docket No. 15-0541, the Commission prudently rejected "Staff's proposals to require the utility to withhold payment and to disallow under-performing programs," and instead directed that interested parties further address contract issues through the workshop process facilitated by the Stakeholder Advisory Group ("SAG"). *Illinois Power Agency*, ICC Docket No. 15-0541, Final Order (Dec. 16, 2015) ("*2016 Procurement Plan Order*") at 110. As the 2017 Plan observes, however, the Commission disallowed costs associated with the insolvent vendor just six months later because ComEd had not withheld payment from the vendor. *In re Commonwealth Edison Co.*, ICC Docket No. 14-0567, Final Order (June 21, 2016) at 29-30.

In light of the concerns previously articulated by the IPA, ComEd, and others regarding the undesirable impacts of Staff's withholding proposal on IPA energy efficiency programs and vendor participation, the 2017 Plan includes a discussion of the utilities' actions in response to these orders and a preliminary analysis of the impacts of these actions. Specifically, the Plan notes that ComEd and Ameren have revised their pay-for-performance contracting approaches to impose the more stringent payment terms recommended by the Commission. Ameren introduced a surety bond requirement for winning bidders, and the 2017 Plan questions whether this new requirement could have played a role in the decline in the number of bids Ameren received as compared to the prior year: "It is unclear to the Agency whether a measure such as surety bonds is necessary given the pay-for-performance nature of Section 16-111.5B energy efficiency contracts, and if a surety bond requirement produces a chilling effect on participation, it could actually have a net negative impact on ratepayers by reducing the number of cost-

effective programs included in the IPA’s electricity procurement plan.” Plan at 114. With respect to ComEd, the Plan correctly observes that “ComEd has implemented a stricter pay for performance model as a reaction to the implications of the disallowance of expenses from a prior Section 16-111.5B program whose vendor went bankrupt.” *Id.* at 124. The Plan further observes that “[b]ecause ComEd did not impose its revised model until after the close of the bid submittal deadline, the IPA has not had an opportunity to review whether the new requirements will adversely impact bidder participation in response to future ComEd RFPs.” *Id.*

### **B. Need for Commission Clarification and Approval of Contract Templates**

Given the changing Commission guidance on pay-for-performance contracting – the most recent of which encourages utilities to withhold funding from vendors or face disallowance risk – ComEd shares the IPA’s confusion and concerns about the viability of the IPA third-party energy efficiency programs going forward. In particular, ComEd concurs with the IPA’s view that a careful weighing of interests must be undertaken here: “While the IPA appreciates that the ICC must consider whether utilities prudently manage their expenditures, balance must be achieved between necessary risks to achieve cost-effective energy reductions and completely insulating ratepayers or shareholders from any lost expenses.” Plan at 112. ComEd also supports, in part, the Plan’s recommendation that the Commission provide “general guidance ... about terms and conditions utilities should include in their contracts offered to vendors, as such clarity could also increase vendor confidence in the program structure.” *Id.*

While ComEd believes that general guidance from the Commission will be helpful, it is not sufficient to resolve the contracting uncertainty that remains following the orders in Docket Nos. 14-0567 and 15-0541. To ensure that utilities, vendors, and stakeholders have the clarity and confidence to move forward with energy efficiency contracts that strike the correct balance,

ComEd attached its energy efficiency contract templates to its Comments on the IPA Draft Plan, and requested that they be attached to the filed Plan for Commission review and approval. Because the IPA energy efficiency programs include both ComEd-managed programs and third-party managed programs, ComEd included its contract templates applicable to both kinds of programs. In its Petition and filed Plan, however, the IPA indicated that it was declining the invitation to include the contract templates, citing to the compressed timeframe of this docket and that these kinds of issues are better suited to the workshop process. IPA Pet. at 7; Plan at 112.

Yet, the *2016 Procurement Order* already directed interested stakeholders to take up the issue of vendor contracting in the SAG workshop process, and the parties did so during a process that began in January 2016 and concluded in July 2016. Indeed, the 2017 Plan includes the consensus items from that process. Plan at 107-110. As a result, the workshop process has been exhausted, and the Commission should approve in this docket the energy efficiency vendor contract templates to be used by the utilities.

### **C. Proposed Revisions to Plan**

As reflected in Appendix A, ComEd has included proposed changes to the Plan that elevate and identify the third-party vendor and contracting issues as key policy issues to be decided by the Commission in this docket. To this end, ComEd proposes that the Plan include additional discussion regarding the procedural history and relevant Commission orders on these issues, as well as descriptions of the utilities' proposed contracting approaches for both utility-managed and third-party managed programs. Specifically, ComEd proposes that the Plan be revised to highlight key terms of its vendor payment provisions in both its pay-for-performance contracts and its contracts for ComEd-managed programs. These include the following:

- ***Pay-for-Performance Contracting:*** Since the inception of the IPA third-party energy efficiency programs, ComEd has executed pay-for-performance contracts with the vendors whose programs are approved by the Commission in an IPA procurement plan. These contracts include standard terms and conditions, as well as a specific scope of work that describes the energy efficiency program to be offered, the promised kilowatthour savings, budgeting, reporting requirements, invoicing, and payment terms. As a pay-for-performance contract, moreover, the vendor is required to give back funds in proportion to any shortfall in promised kilowatthour savings, as determined by the independent evaluator. Under the original version of these contracts, vendors could begin receiving payment to cover start-up costs incurred prior to the commencement of the planning year, and also received in-progress payments throughout the year. At the end of the year, expenses were “trued up” under the pay-for-performance structure based on the actual net kWh savings achieved by the program as validated by the independent evaluator.

In response to the disallowance approved by the Commission in ICC Docket No. 14-0567, ComEd has revised its pay-for-performance contracts to eliminate payment of start-up costs, and has also implemented enhanced verification and withholding provisions that limit the amounts ComEd will pay prior to receiving final evaluation results from the independent evaluator. Specifically, ComEd will only pay 90% of verified savings for those measures whose energy savings have been “deemed” by the Illinois Technical Reference Manual. If the measure’s energy savings have not been deemed, ComEd will only pay 75% of the verified savings for

such measure. The withheld amounts will only be paid if the independent evaluator's final evaluated results justify such payment.

- ***Contracting and Payment Process for ComEd-Managed Programs:*** Several of the programs ComEd proposes for this Plan are ComEd-managed programs (as opposed to third-party administered programs). In other words, these programs are similar in structure to those ComEd implements and manages under its overall energy efficiency portfolio and its various programs and program elements, as approved by the Commission under Section 8-103 of the PUA. For ComEd-managed programs, ComEd relies on a broad network of third-party vendors to assist with the implementation of its energy efficiency plans (*e.g.*, marketing, outreach, engineering and technical analysis, incentive fulfillment, inspections, appliance pick-up, data tracking). Each contract that ComEd executes with these vendors contains a unique and well-defined scope of work that clearly articulates the vendor's specific tasks and deliverables. Each contract also includes key performance indicators, which measure the vendor's performance under various metrics related to the contract's tasks and deliverables (*e.g.*, safety, customer experience, timeliness of rebates, data accuracy). Vendors generally submit invoices to ComEd on a monthly basis for the work performed during the prior month. Subject to ComEd's verification of the accuracy of the invoice and that the goods or services were delivered, ComEd will typically pay invoices within 45 days, and will expedite payment if the invoice is for rebate and incentives reimbursement.

To assist the Commission in providing additional clarification regarding contract terms and conditions, ComEd recommends that the Plan also be revised to attach the contract templates

that the utilities propose to execute with third-party vendors, whether they are pay-for-performance contracts related to third-party managed programs or contracts related to utility-managed programs. To this end, ComEd has attached the following contract templates to its Objections:

- Appendix B: Third Party-Managed Program Terms and Conditions
- Appendix C: Third Party-Managed Program Scope of Work
- Appendix D: ComEd-Managed Program Master Terms and Conditions for the Purchase of Materials and Services
- Appendix E: ComEd-Managed Program Master Terms and Conditions for Consulting and Professional Services
- Appendix F: ComEd-Managed Program Scope of Work

This approach will ensure that the Commission can review and approve all relevant contracts, which will provide the clarity and certainty required by the utilities, vendors, and stakeholders.

## **II. Corrected Balance of Alternative Compliance Payments (Sec. 8.3)**

In calculating the amount of hourly customer alternative compliance payment (“ACP”) funds that are being held by ComEd as of May 31, 2016, ComEd notes that the Plan made an adjustment for distributed generation (“DG”) renewable energy credit (“REC”) contracts signed after May 31, 2016 (\$648,277), but did not make a similar adjustment for the value of the DG REC contracts signed during 2015 (\$984,690). Plan at 96-97. As a result, Section 8.3 should be revised to reflect an adjusted value of \$25,834,060, after taking into account DG REC contracts executed during 2015 and 2016.

**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 3, 2016

Respectfully submitted,

Commonwealth Edison Company

By: 

One of its attorneys

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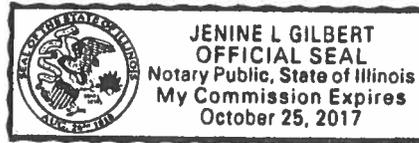
Counsel for Commonwealth Edison Company

**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.

  
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Michael S. Brandt

Subscribed and sworn to before  
me this 30th day of September, 2016.



  
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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 30<sup>th</sup> day of September, 2016.

  
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Notary Public

