

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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<b>ILLINOIS POWER AGENCY</b>	:	
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<b>Petition for Approval of the 2017 IPA</b>	:	<b>Docket No. 16-0453</b>
<b>Procurement Plan pursuant to</b>	:	
<b>Section 16-111.5(d)(4) of the Public</b>	:	
<b>Utilities Act</b>	:	

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**STAFF OF THE ILLINOIS COMMERCE COMMISSION**  
**RESPONSE TO OBJECTIONS TO THE ILLINOIS POWER AGENCY'S**  
**2017 PROCUREMENT PLAN**

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October 21, 2016

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**STAFF OF THE ILLINOIS COMMERCE COMMISSION  
RESPONSE TO OBJECTIONS TO THE ILLINOIS POWER AGENCY’S  
2017 PROCUREMENT PLAN**

Pursuant to the October 5, 2016 Notice of Schedule and Notice of Administrative Law Judge’s Ruling, the Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, respectfully submits this Response to Objections to the Illinois Power Agency’s (“IPA”) 2017 Procurement Plan (“Plan” or “IPA Plan”). Staff also submits the affidavits of Dr. James Zolnierek, Jennifer H. Morris and Richard J. Zuraski in support of facts and non-legal matters contained herein.

**I. BACKGROUND**

On September 27, 2016, the IPA filed its Plan for the five year procurement planning period from June 2017 through May 2022 with the Illinois Commerce Commission (“Commission”) thereby initiating this docket.

On or about October 3, 2016, pursuant to Section 16-111.5(d)(3) of the Illinois Public Utilities Act (“PUA”), Staff and the following parties served on each other and filed Responses and/or Objections to the Plan:

Ameren Illinois Company (“Ameren Illinois,” “Ameren,” or “AIC”),  
Commonwealth Edison Company (“ComEd”),  
Environmental Law and Policy Center (“ELPC”),  
MidAmerican Energy Company (“MEC” or “MidAmerican”),  
Renewables Suppliers,<sup>1</sup>  
The People of the State of Illinois by Lisa Madigan, Attorney General (“AG”),  
Exelon Generation Company, LLC (“Exelon”), and  
the Natural Resources Defense Council (“NRDC”).

On October 5, 2016, the Chief Administrative Law Judge of the Commission provided notice that, “pursuant to Section 16-111.5(d)(3) of the Public Utilities Act, no hearing in the above-referenced matter is determined to be necessary.” (October 5, 2016, Notice of Chief Administrative Law Judge’s Ruling.) A Notice of Schedule and Notice of Administrative Law Judge’s Ruling provides for the filing of: Responses to Objections (“Response”) and Replies to Responses (“Reply”), due October 21, 2016 and October 31, 2016, respectively. (October 5, 2016, Notice of Schedule and Notice of Administrative Law Judge’s Ruling.) The ALJ’s schedule also provides for an ALJ’s Proposed Order (“ALJPO”), exceptions and reply exceptions, due November 14, 2016, November 21, 2016, and December 2, 2016, respectively. Staff’s Response to certain objections of ComEd, NRDC and the Renewables Suppliers are set forth below.<sup>2</sup>

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<sup>1</sup> The Renewables Suppliers are comprised of: EDP Renewables North America LLC and its affiliated project companies Meadow Lake Wind Farm I LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm III LLC, Meadow Lake Wind Farm IV LLC and Blackstone Wind Farm LLC; Invenergy LLC and its affiliated project companies Grand Ridge Energy IV LLC, and Invenergy Illinois Solar; and NextEra Energy Resources, LLC and its subsidiary project company FPL Energy Illinois Wind, LLC. (Renewables Suppliers Objections, 1.)

<sup>2</sup> The section headings and sections of the IPA Plan at issue are indicated in bold and brackets [ ] below, respectively. For any new Section proposed by a party, the sections are in quotes.

## II. ARGUMENT

### A. The Action Plan – Item 8 [Section 1.4] and Use of Hourly Alternative Compliance Payments Held by Utilities [Section 8.3]

#### 1. Response to Renewables Suppliers

Without additional justification and clarification, Staff cannot support Renewables Suppliers' proposal that the IPA Plan or Commission specify that the amount of the utility's accumulated hourly Alternative Compliance Payment ("ACP") funds to be allocated to purchasing curtailed Long Term Purchased Power Agreement ("LTPPA") Renewable Energy Credits ("RECs") during 2017-2018 should be 110% of the estimated amount needed to purchase curtailed LTPPA RECs in 2017-2018.

Renewables Suppliers argue:

[T]he IPA Plan (or the Commission's order) should specify how, if it is determined that LTPPA curtailments are needed in 2017-2018, the amount of the utility's accumulated Hourly ACP Funds to be allocated to the purchase of curtailed LTPPA RECs (and therefore not available to fund the 2017 DG REC procurements) should be determined. In its Docket 13-0546 Order on Rehearing, the Commission ruled that curtailed LTPPA RECs should be purchased by the utility, using its accumulated Hourly ACP Funds, at prices equal to the Contract Prices under the LTPPAs less the Day Ahead Hourly Locational Marginal Prices ("DAH-LMPs"). Docket 13-0546, Order on Rehearing, at 57 (Finding (4)). While the Contract Price under each LTPPA is known, the DAH-LMPs are determined throughout the year. Therefore, at the start of the year (or any other time period), it is not possible to calculate with certainty what the purchase price will be for curtailed LTPPA RECs in the ensuing period. To take this uncertainty into account, the IPA Plan (or the Commission's order) should specify that the amount of the utility's accumulated Hourly ACP Funds to be allocated to purchasing curtailed LTPPA RECs during 2017-2018 should be 110% of the estimated amount needed to purchase curtailed LTPPA RECs in 2017-2018.

(Renewable Suppliers Objections, 4.) Renewables Suppliers are correct that the Plan or Commission's Order should specify how to determine the amount of the utility's accumulated Hourly ACP Funds to be allocated to the purchase of curtailed LTPPA RECs

and therefore not available to fund the 2017 DG REC procurements. Renewables Suppliers are also correct in their description of the uncertainty over the cost of fully repurchasing curtailed LTPPA RECs, using the pricing methodology previously approved by the Commission.

Staff agrees that the IPA and Commission should be conservative in proposing and approving new distributed generation (“DG”) procurement commitments. Indeed, Staff believes that the IPA has been reasonably conservative in this respect, by only committing ACP funds that have already been collected, less ACP funds that have already been committed through previous DG procurement events. The IPA has included no projections of new ACP revenue in its previously-approved and its currently-proposed DG REC budgets, even though it is highly likely that there will be substantial new ACP revenues year after year.

In principle, Staff does not necessarily oppose the Renewables Suppliers’ proposal to compute the amount to be allocated to the purchase of curtailed LTPPA RECs as “110% of the estimated amount needed to purchase curtailed LTPPA RECs in 2017-2018.” Id. However, Staff cannot support that proposal unless the Renewable Suppliers, IPA or some other interested party can further explain and justify using a factor of 110% (as opposed to 101%, 105%, or 115%, for example) to account for the cited uncertainty. In addition, it should also be shown how the amount needed will be estimated. Such details should be part of the approved Plan if for no other reason than to make the Plan clear. Inclusion of such details in the approved Plan has the added virtue of enhancing transparency over the cost of the LTPPAs. Finally, Staff’s support for the proposal is conditional on “the amount of the utility’s accumulated Hourly ACP Funds to be allocated”

being limited to the sum of Hourly ACP revenues already collected *minus* the sum of Hourly ACP funds that have already been committed to other REC purchases through previous procurement events. As explained in Staff's Response addressing Section 1.4 The Action Plan - Item 8, funds that are already committed to other REC purchases should not be clawed back for the benefit of LTPPA suppliers.

Staff also opposes Renewables Suppliers' proposal in Action Plan Item 8 [Section 1.4], to make DG contract payments subordinate to the use of the hourly ACP funds to purchase curtailed LTPPA RECs. Renewables Suppliers object to the IPA Plan's references to hourly ACP Funds having been "committed" and "contractually committed" to the purchase of DG RECs procured in the 2015 and 2016 DG REC procurement events. (Renewables Suppliers Objections, 4.) Furthermore, Renewables Suppliers object to giving priority to the winning suppliers in the 2015 and 2016 DG REC procurement events in the use of ACP funds. Id. Renewables Suppliers propose that DG REC contracts should specify that payments on those contracts "over the five year contract period are subject to and subordinate to the use of the Hourly ACP Funds to purchase curtailed LTPPA RECs, should any curtailments of purchases under the LTPPAs be necessary during that period." Id. at 6-7.

Renewables Suppliers' basis for giving the LTPPA suppliers priority over DG REC suppliers is their argument that "the Commission established in the Docket 13-0546 Order on Rehearing (relating to the 2014 IPA Plan) that accumulated Hourly ACP Funds should be used to purchase curtailed LTPPA RECs." (Renewables Suppliers Objection, 5.) However, at that time, there were no existing DG contracts to subordinate to the LTPPAs; and the IPA was proposing to use the accumulated ACP funds for the existing LTPPAs

during that 2014-2015 plan year, in lieu of entering into any other new contracts (for DG or otherwise). It was not until the following plan (for the 2015-2016 plan year) that the IPA proposed procuring new 5-year DG REC contracts with the ACP funds; and as the Commission noted:

Given that the IPA is planning a procurement of distributed generation ("DG") resources using collected hourly ACP funds, the IPA recommends the hourly Alternative Compliance Payments funds available for that procurement be reduced by the amount needed ensure full payment of any 2014-2015 curtailed RECs. In addition, should a curtailment of the long-term power purchase agreements be necessary for the 2015-2016 delivery year, the amount of funds available for the DG procurement will be likewise adjusted.

Illinois Power Agency, ICC Order Docket No. 14-0588, 6 (December 17, 2014).

As is clear from the passage above, the reduction in funds available for entering into the new DG contracts applied only to the amounts needed to ensure full payment of any prior year (2014-2015) and prompt year (2015-2016) curtailments under the LTPPAs. Neither the 2015 Plan nor the Commission's order in Docket No. 14-0588 explicitly states or even suggests including within the new DG contracts provisions for curtailing contract quantities in the event of *future* LTPPA funding shortages. Indeed, no such curtailment provisions were included in those DG contracts. In contrast, the Commission-approved LTPPAs include provisions explicitly allowing for curtailment under such circumstances, and such provisions may very well have led Renewables Suppliers to build risk premiums into their bids.

Staff supports the status quo with respect to the non-proliferation of curtailment provisions. Such provisions were not inherently or unequivocally beneficial, but were added to the LTPPAs out of necessity, since funding for those 20-year contracts was highly uncertain. However, it is completely unnecessary to add such provisions to the

DG contracts, since funding for the DG purchases is assured through the IPA's conservative approach explained above. Furthermore, adding such provisions to DG contracts would make them less attractive to potential bidders and would likely deter bids and/or increase the level of bid prices. Even without such provisions, the IPA has found it very difficult to attract enough bids to achieve the planned DG REC targets (e.g., less than 20% of the 2016-2017 targets have been met through the first two procurement events). To say the least, inclusion of such curtailment provisions would do nothing to attract more bidders to future IPA REC procurement events (for DG RECs or for any kind of RECs). In sum, adding curtailment provisions to DG REC or other REC contracts would be of benefit to no one except Renewable Suppliers.

For all the above reasons, Staff opposes the Renewables Suppliers' proposed subordination (relative to the LTPPAs) of current and future DG REC contracts.

**B. Vendor Contracts [“Section 9.4.3”] and ComEd Vendor Contract Templates Recommended for Approval [“Section 9.6.8”]<sup>3</sup>**

**1. Response to ComEd**

ComEd proposes two new sections to the Plan which are related to ComEd's proposal that the Commission approve in this year's IPA Plan docket various ComEd vendor contract templates. The Commission should decline to adopt ComEd's contract templates and the related proposed modifications to the IPA Plan for the reasons set forth below. ComEd makes several arguments in support of its modifications to the IPA Plan.

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<sup>3</sup> In its Objections, ComEd proposed two new sections to the IPA Plan. The first new section proposed by ComEd is “Vendor Contracts” which would become Section 9.4.3. The second new section proposed by ComEd is “ComEd Vendor Contract Templates Recommended for Approval” which would become Section 9.6.8.

ComEd argues that “it is critical that the Commission provide clear and detailed guidance regarding the contract terms and conditions that should apply to utilities’ contracts with energy efficiency vendors.” In addition, ComEd argues that “[b]ecause of the uncertain regulatory policy regarding these contracts, ComEd also requests that the Commission approve ComEd’s proposed contract templates.” (ComEd Objections, 1-2.) ComEd proposes that the contract templates be attached to the IPA Plan as Appendices. Id. at 7-8.

The Commission should not approve ComEd’s proposed contract templates as part of the IPA Plan for 2017 for a number of reasons. First, approval of ComEd’s proposed contract templates as part of the 2017 IPA Plan would be inconsistent with the PUA, in particular, Section 16-111.5B(a)(5) which provides in part that:

In the event the Commission approves the procurement of additional energy efficiency, it shall reduce the amount of power to be procured under the procurement plan to reflect the additional energy efficiency and shall direct the utility to undertake the procurement of such energy efficiency, which shall not be subject to the requirements of subsection (e) of Section 16-111.5 of this Act. The utility shall consider input from the Agency and interested stakeholders on the procurement and administration process.

In this matter, ComEd seeks approval of contract templates it appears to have developed on its own. ComEd did not seek Staff’s input on the contract templates. Staff first became aware of the ComEd’s contract template proposals when ComEd included them with its comments on the IPA’s draft plan. ComEd apparently failed to seek the IPA’s input as well; the IPA makes no reference in its Petition to reviewing ComEd’s contract templates prior to ComEd submitting comments on the IPA’s draft plan. (IPA Petition, 7.) Finally, in its Objections, ComEd makes no mention of seeking interested stakeholders’ input on

the contract templates. In light of ComEd's apparent failure to seek input from the IPA and interested stakeholders on its contract templates as required by statute, the Commission should decline to adopt ComEd's contract templates and related proposed modifications to the IPA Plan.

The Commission should also decline to adopt ComEd's contract templates and the related proposed modifications to the IPA Plan for the reasons set forth by the IPA in its Petition. The IPA correctly asserts that "general guidance from the Commission in combination with and identification and resolution [of] any specific, discrete concerns should achieve the same ends" as attaching contract templates to the IPA Plan. Id. Consistent with providing guidance to the utilities, Section 9.3 of the Plan sets forth numerous consensus items related to vendor energy efficiency contracts which are part of the procurement and administration process of energy efficiency procurement which the IPA and other interested stakeholders are to provide input on. (IPA Plan, 109.) Staff further agrees with the IPA that, if the Commission is inclined to approve energy efficiency contract templates, such a process – and the templates approved in the process – should apply to all utilities (i.e., Ameren) and not just ComEd. (IPA Petition, 7.) Finally, Staff agrees with the IPA that litigating contract terms would add additional layers of review and analysis "to an already time constrained proceeding." Id.

Despite ComEd's claim to the contrary, there is no regulatory uncertainty regarding vendor contracts. In support of its regulatory uncertainty argument ComEd in its Objections discusses two prior Commission orders. The first of these is the Commission's Order approving the IPA's 2016 Plan, ICC Docket No. 15-0541. The second Order concerns a reconciliation proceeding of ComEd's Rider EDA (Energy Efficiency and

Demand Response Adjustment Rider) for the June 2013 through May 2014 billing period, ICC Docket No. 14-0567. (ComEd Objections, 3.) ComEd suggests that these two orders have created regulatory uncertainty for ComEd. Id. ComEd argues that in the 2016 IPA Plan Order, the Commission rejected the withholding of payment for nonperformance, but in the ComEd Rider EDA reconciliation proceeding, the Commission disallowed cost recovery for ComEd because ComEd had not withheld payment for nonperformance. Id.

The two orders are not inconsistent for the following reasons. First, ComEd fails to acknowledge that the Commission in the 2016 IPA Plan Order clearly stated that, with respect to the ComEd Rider EDA reconciliation proceeding, the “[i]ssues presented in that proceeding will be resolved in that case.” Illinois Power Agency, ICC Docket No. 15-0541, 111 (December 16, 2015) (“2016 IPA Plan Order”). Accordingly, any suggestion that the Commission Order in the 2016 IPA Plan proceeding resolved the contract question raised in the Rider EDA reconciliation docket is mistaken. Second, ComEd mischaracterizes the 2016 IPA Plan Order. The Commission did not reject on the merits Staff’s recommendation regarding withholding of payment, but rather simply directed the parties to pursue that issue in workshops. Therefore, since the Commission wanted the issues addressed in workshops, it declined at that time to adopt Staff’s specific recommendation, but did not speak to the merits of withholding payment. Third, the basic facts in the two dockets are very different. The Rider EDA reconciliation proceeding deals with assessing the prudence of ComEd management decisions made prior to and during the June 2013 through May 2014 billing period. The 2016 IPA Plan docket concerns a subsequent time period commencing two years later and actions to be taken during that later period of time. Any consideration of an order addressing a period of time subsequent

to the relevant time of the reconciliation period and issued after the relevant time period, in a prudence analysis, would involve impermissible hindsight review.<sup>4</sup>

It is also worth noting that ComEd has taken an appeal from the Commission's Order concerning ComEd's Rider EDA June 2013 through May 2014 reconciliation, ICC Docket No. 14-0567. (ComEd v. Illinois Commerce Comm'n, No. 1-16-2410, (filed September 13, 2016)). ComEd argued in its application for rehearing that the two orders are "contradictory", (Illinois Commerce Comm'n v. ComEd, ICC Docket No. 14-0567, ComEd Application for Rehearing, 5), and presumably will raise the same argument on appeal. Certainly, the issue of whether those two orders are contradictory, which they are not, will be addressed by the Appellate Court in ComEd's appeal and need not be resolved in this proceeding.

**C. Programs Deemed "Non Responsive to the RFP" by Ameren Illinois [Section 9.5.4], Demand Based Ventilation Control Program [9.5.4.2] and Behavioral Program [9.5.4.3]**

**1. Response to NRDC**

Staff supports NRDC's objection recommending a secondary test to address the issue of cross-subsidization between electric and gas rate payers with respect to certain energy efficiency programs and measures. In its Plan, the IPA states that cost-effectiveness should be determined based upon total resource cost ("TRC") test results inclusive of gas savings. (IPA Plan, 117, footnote 258.) Section 16-111.5B of the PUA

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<sup>4</sup> The Commission has defined prudence as 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. In determining whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible. ICC Order Docket No. 88-0142, 25-26 (February 5, 1992).

requires measures included in the IPA Plan to be cost-effective based upon a definition which accounts for both electric and gas savings. The Commission should not, however, accept all measures that pass the statutorily-defined TRC test. Section 16-111.5B(a)(3)(D) of the PUA requires the Commission to also assess whether measures lead to a reduction in the overall cost of electric service or, for example, whether adoption of a measure would require electric customers to cross-subsidize gas customers.

The IPA suggests that an evaluation of such cross-subsidization, if necessary, could be done on the basis of an alternative TRC test that includes only electric savings. Id. In its Objections, NRDC states that “to the extent that a secondary test is required to ensure that cross-subsidization does not occur, the second test should be the Utility Cost Test (UCT), not the electric only TRC.” (NRDC Objections, 2.) In support of this statement, NRDC argues that “[t]he program participant’s portions of the measure costs have no relevance to such an assessment; and the test is especially skewed if other non-electric benefits (e.g., gas savings) that accrue to those participants are not considered.” Id.

NRDC’s logic is compelling. An individual customer’s decision to directly contribute to paying for a measure in order to obtain savings on his/her gas bills does not imply that electric customers are cross-subsidizing gas customers. Only when the costs the utility incurs and passes along to electric customers exceed the benefits to electric customers (and the measure passes the TRC only because natural gas benefits are included) do electric customers subsidize gas customers. As NRDC correctly notes, “[t]he UCT is a more rational test because it compares only what electric ratepayers would spend to all of the benefits they would receive.” Id. For these reasons, Staff supports

NRDC's proposal that, for purposes of assessing cross-subsidization, UCT test results should be, along with any other pertinent information, reported in future IPA procurement plan filings and be made available to Staff and the parties.

### III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission consider Staff's Response to Objections to the IPA's 2017 Procurement Plan and the various recommendations contained herein.

Respectfully submitted,

/s/

JOHN C. FEELEY  
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*Counsel for the Staff of the  
Illinois Commerce Commission*

October 21, 2016

**STATE OF ILLINOIS  
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**ILLINOIS POWER AGENCY**

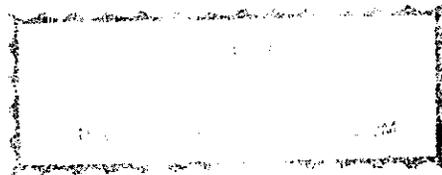
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**Docket No. 16-0453**

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**AFFIDAVIT OF JAMES M. ZOLNIEREK**

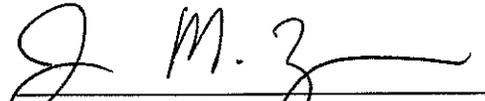
State of Illinois            )  
  )  
County of Sangamon        )



The undersigned, under oath, deposes and states as follows:

1. My name is James M. Zolnierек. I am employed by the Illinois Commerce Commission as the Director of the Commission's Policy Division.
2. I have read the Staff of the Illinois Commerce Commission's Response to Objections to the Illinois Power Agency's 2017 Procurement Plan ("Response").
3. I have personal knowledge of facts and matters discussed in the Response and, to the best of my knowledge, information and belief, those facts and non-legal opinions expressed in the Response are true and accurate and, if sworn as a witness, I could testify concerning them.

Further affiant sayeth not.

  
James M. Zolnierek

Subscribed and sworn to before me

This 18<sup>th</sup> day of October, 2016.

  
Notary Public



STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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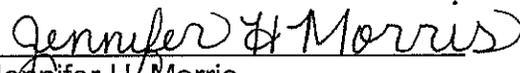
AFFIDAVIT OF JENNIFER H. MORRIS

State of Illinois            )  
  )  
County of Sangamon        )

The undersigned, under oath, deposes and states as follows:

1. My name is Jennifer H. Morris. I am employed by the Illinois Commerce Commission as an Economist in the Commission's Policy Division.
2. I have read the Staff of the Illinois Commerce Commission's Response to Objections to the Illinois Power Agency's 2017 Procurement Plan ("Response").
3. I have personal knowledge of facts and matters discussed in the Response and, to the best of my knowledge, information and belief, those facts and non-legal opinions expressed in the Response are true and accurate and, if sworn as a witness, I could testify concerning them.

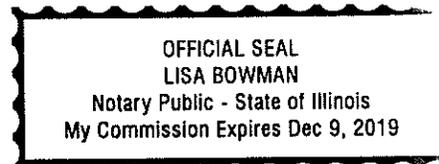
Further affiant sayeth not.

  
Jennifer H. Morris

Subscribed and sworn to before me

This 19<sup>th</sup> day of October, 2016.

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



**STATE OF ILLINOIS  
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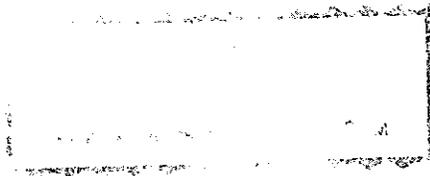
**Docket No. 16-0453**

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**AFFIDAVIT OF RICHARD J. ZURASKI**

State of Illinois )

County of Sangamon )



The undersigned, under oath, deposes and states as follows:

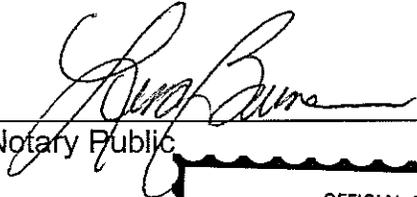
1. My name is Richard J. Zuraski. I am employed by the Illinois Commerce Commission as an Economist in the Commission's Policy Division.
2. I have read the Staff of the Illinois Commerce Commission's Response to Objections to the Illinois Power Agency's 2017 Procurement Plan ("Response").
3. I have personal knowledge of facts and matters discussed in the Response and, to the best of my knowledge, information and belief, those facts and non-legal opinions expressed in the Response are true and accurate and, if sworn as a witness, I could testify concerning them.

Further affiant sayeth not.

  
Richard J. Zuraski

Subscribed and sworn to before me

This 18<sup>th</sup> day of October 2016.

  
Notary Public

