

**COMMENTS ON THE 2009 PROCUREMENT PROCESS  
PURSUANT TO SECTION 16-111.5(o) OF THE PUBLIC UTILITIES ACT**

**PRESENTED TO**

**THE ILLINOIS COMMERCE COMMISSION**

**by**

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June 1, 2009

**BOSTON PACIFIC COMPANY, INC.**

## INTRODUCTION

Boston Pacific Company, Inc. (“Boston Pacific”) appreciates the opportunity to submit these comments in response to the Illinois Commerce Commission’s (the “Commission’s”) request for comments concerning the Spring 2009 Electric Procurement Events.<sup>1</sup>

Boston Pacific served as the Procurement Monitor for all five of the requests for proposals (RFPs) issued by both ComEd and Ameren in 2009. In that capacity, one day after the conclusion of each RFP, we provided a confidential report to the Commission. In all cases we recommended that the Commission accept the results of the 2009 RFPs. In general, the bases for our recommendation were that the RFP achieved its stated objectives, there was no evidence of collusive or otherwise anticompetitive behavior, and the rules for the RFP, as specified by the Illinois Power Agency Act (Public Act 095-0481, hereafter the “Act”) and approved by the Commission, were followed.

## COMMENTS ON RFP RESULTS AND COMPETITIVENESS

The good news from the 2009 RFPs is that average winning prices are down substantially from last year. For example, as shown in the Attachment, in the ComEd’s energy (“Standard Products”) RFP, peak energy prices declined by 52% compared to last year as measured by the simple average of the year-over-year change in winning prices for each of the 12 monthly peak energy products solicited across the first year. Similarly, off-peak prices declined by 46%. A similar trend was seen in Ameren’s Energy RFP. This year Ameren procured energy swaps for individual months, while last year energy swaps were procured for groupings of months. This makes a comparison of results less straight forward, however, we include the publicly available results for both RFPs in the attachment.

Lower prices are good news in-and-of-themselves because they mean lower rates for Illinois ratepayers. But lower prices are also good news to the extent they are evidence of the competitiveness of Illinois’ RFPs. In effect, this year’s price declines show that bidders are responding to the market – these prices reflect the broad declines in electricity and fuel markets across the region. Other evidence of the competitiveness of this year’s RFPs includes changes in the number and names of the winners. For example, in this year’s Ameren Energy RFP there were 8 winners as compared to just 2 winners last year. For ComEd’s Energy RFP there were 10 winners this year as compared to 8 last year.

Prices also were substantially lower in the REC RFPs. Again looking at the highest priced product, Illinois Wind, prices declined by 41% in the ComEd REC RFP and by 43% for the Ameren REC RFP compared to last year. As was true last year, prices for wind RECs, and

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<sup>1</sup> *Public Notice of Informal Hearing (Request for Comments) Concerning the Spring 2009 Electric Procurement Events Which Were Held On Behalf of Commonwealth Edison Company and the Ameren Illinois Utilities (Ameren-CILCO, Ameren-CIPS, and Ameren-IP)*, Issued 5/15/2009.

especially for RECs from within Illinois, were higher than prices observed for RECs elsewhere.<sup>2</sup> This means that ratepayers paid more for RECs than if the process had attempted to solicit merely the cheapest RECs available. At the same time, this year all winning RECs were from Illinois, meaning that these extra payments go to renewable energy facilities located in Illinois. Also, the preferences for Illinois RECs appear to be driving up participation in these RFPs among Illinois renewable energy producers. This year, Illinois REC bids were numerous enough and priced aggressively enough that Illinois REC bidders took 100% of the market for both ComEd and Ameren. Another indicator is that the number of REC winners increased from 8 last year to 18 this year for the ComEd RFP, and from 4 to 14 for the Ameren RFP.

These good results for ratepayers come from having a large number of high quality bidders who are willing to bid aggressively in all of the RFPs. Such competitiveness is the engine for good RFP results. Having a fair and transparent process is what attracts such bidders. As process changes are proposed, the positive results of competition, and the fair and transparent process that attracts bidders should always be kept in mind. To this end the Commission should consider reaching out to bidders through a survey to keep up-to-date on their views of the process.

Consideration should be given to having the Procurement Monitor develop a report about the procurements that is made available to the public. The report would include analysis about the RFP process and about publicly available results of the RFP. We believe that providing such additional analysis to the public can increase confidence in the process. We also note that in other instances where Boston Pacific serves as procurement monitor, we produce a final report, which is released to the public, in either redacted or un-redacted form: i) in New Jersey, aggregate information about bid results such as number of total bidders and winners and average winning prices is released two days after the auction, coinciding with Commission approval of bid results; specific information about bidders is released one month before power flows, and a redacted version of our final public report is also released; ii) in Ohio, aggregate information is released two days after the auction, with more detailed, bidder specific information, including auction proceedings, released 21 days later; iii) in Delaware, basic aggregate information is released following bidding, while 21 days after Commission approval of bids our technical report and information on winning bids, including bidder specific information such as names of winners and percentage load won by each bidder, is released.

Finally, the products procured in these RFPs, while very important, are providing only part of the full electricity service Illinois ratepayers need. To fill in the rest of that service, both ComEd and Ameren purchase from other markets products such as dispatchable energy and ancillary services. We recommend that at the end of each June through May service year, each utility report to the Commission the full cost of full requirements services.

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<sup>2</sup> For example, the April Market Update from Evolution Markets, a REC broker, shows that wind RECs for compliance in Texas were trading about \$1 for the first half of 2009. See [http://new.evomarkets.com/pdf\\_documents/REC%20Market%20Update.pdf](http://new.evomarkets.com/pdf_documents/REC%20Market%20Update.pdf)

Despite the successes of this year's RFP, we continue to strive for improvement. In the brief comments that follow, we make a few recommendations on areas that might be addressed to improve future procurements.

## RECOMMENDATIONS ON PROCESS

- **Schedule:** The schedule to conduct the procurement processes should be defined to start early in the year so that it can take the following into consideration:
  - There are at least two hard deadlines to consider: (a) the June 1 deadline for the new service year, and (b) any capacity purchases in MISO must be made at least one month in advance.
  - There is always a possibility that expected load is not met after the first bid day, requiring a make-up bid day. In this case, the Act calls for the Procurement Administrator, Procurement Monitor, and Commission Staff to meet no more than 10 days after an ICC decision to analyze potential causes of low supplier interest or causes for the Commission decision to reject the results of the procurement event. The schedule should allow for enough time to be able to announce and hold another bid day before the new service year begins on June 1, if necessary.
  - Bidders should have sufficient time to review draft documents, understand qualification procedures and final documents, and to obtain necessary letters of credit.
  - There should be enough time before final procurement documents are released to evaluate any need to modify quantities of products to be procured based on updated load forecasts.
  - Though the process began much later this year than last year, we were able to avoid major complications by relying on the contracts, documents, and process created out of last year's hard work. To the extent that such documents and processes may, at a future date, require an overhaul due to changes in the marketplace or in the needs of Illinois utilities or ratepayers, Procurement Administrators, Procurement Monitors, Commission Staff, and the Illinois Power Authority will likely need more time to complete the process.
- **Procurement Plan:** An expert or expert consulting firm should be hired, by the IPA, to develop the procurement plans, as per Section 1-75(a)(1) of the PUA. This expert or expert consulting firm should have the qualifications outlined in Section 1-75(a)(1)(a) through (g).
- **Q&A:** All RFPs should establish a firm deadline for the submission of questions. This deadline could be two days before bid day. This will allow enough time to post the Q&A so that all bidders have access to the same information. On Bid Day, only procedural questions about how to submit a bid should be allowed.

## RECOMMENDATIONS ON LETTERS OF CREDIT

- **Cash should be an Acceptable Alternative to REC Pre-bid Collateral:** For pre-bid collateral, REC bidders should be allowed the option to post cash instead of a having to obtain an LOC, as was required this year. The required pre-bid security amount is small (e.g., \$10,000 in one of the 2009 REC procurements). The REC procurements have potentially smaller companies bidding than bidders for the energy or capacity procurements and it may be more burdensome for such bidders to obtain LOCs.
- **Standardize Requirements for Banks issuing LOCs:** Standards for banks to be eligible to issue an LOC into any of the Illinois procurements should be the same. This year, there were different standards for the different RFPs. ComEd's procurements required that the issuing bank have a senior unsecured debt rating of "A" or better from Standard & Poor's, or "A2" or higher from Moody's Investor Service. Ameren's procurements required that the senior unsecured long term debt rating be "A-" or better from Standard & Poor's, and "A3" or better from Moody's Investor Service. In addition, we see little need for requiring that a bank must be rated by the two ratings agencies.

## RECOMMENDATIONS ON CALCULATING COLLATERAL THRESHOLDS

- **Affiliates:** The rules by which collateral threshold calculations are set for affiliated bidders should be well-defined. The following is one potential approach:
  - Case 1: Several affiliated companies bid together as a single bidder through an aggregating company. In this case, the Bidder must specify on which one of the affiliated companies' financial standing it intends to rely on to meet the specified credit requirements and for the calculation of collateral thresholds.
  - Case 2: Several affiliated companies bid as separate bidders, and certify that they do not know about each other's intention to bid. The sum of the total unsecured credit allocated to these companies should be capped at the highest potential unsecured credit threshold that any one bidder could qualify for.
- **Bidder's who Rely on Credit from a Foreign Parent or Guarantor:** Some of the RFP documents specified that the financial information required for the calculation of the unsecured credit amount should be from an SEC 10-K and 10-Q. This requirement should be made more flexible to allow equivalent type of financial information from entities that are not subject to SEC reporting.

## RECOMMENDATIONS ON REC PROCUREMENTS

- **Standardized:** RECs should be standardized across both utilities. This includes whether the REC is unit contingent or exactly which attributes accompany the REC.
- **Requiring RECs be Unit-Contingent is Unnecessary:** RECs should not be required to be unit contingent, as the tracking systems used to store and track RECs accomplish the task of guaranteeing REC's origin.
- **NOx Allowances:** Both this year and last year, bidders questioned whether RECs include NOx allowances. This is an issue that should be better explained in the future.

## ATTACHMENT

### ComEd Energy (“Standard Product”), Average Peak Prices

	<b>2009</b>	<b>2008</b>	<b>Difference</b>
June	\$36.23	\$81.13	-55%
July	\$43.27	\$94.92	-54%
August	\$43.34	\$94.64	-54%
September	\$35.54	\$76.80	-54%
October	\$36.10	\$76.01	-53%
November	\$36.05	\$74.89	-51%
December	\$36.41	\$74.71	-51%
January	\$42.45	\$79.76	-47%
February	\$42.04	\$79.72	-47%
March	\$38.05	\$76.15	-50%
April	\$37.81	\$77.50	-51%
May	\$36.21	\$75.70	-52%
<b>Average Difference</b>			<b>-52%</b>

### ComEd Energy (“Standard Product”), Average Off-Peak Prices

	<b>2009</b>	<b>2008</b>	<b>Difference</b>
June	\$22.07	\$42.15	-48%
July	\$26.10	\$47.46	-45%
August	\$26.05	\$47.46	-45%
September	\$22.73	\$42.65	-47%
October	\$23.99	\$43.70	-45%
November	\$24.54	\$44.31	-45%
December	\$24.64	\$44.28	-44%
January	\$26.66	\$49.32	-46%
February	\$26.63	\$48.99	-46%
March	\$25.27	\$44.60	-43%
April	\$25.05	\$44.64	-44%
May	\$21.39	\$42.99	-50%
<b>Average Difference</b>			<b>-46%</b>

**Ameren Energy, Average 2009 Prices**

<b>2009</b>	
June	\$34.12
July	\$42.81
August	\$43.85
September	\$32.89
October	\$33.18
November	\$30.64
December	\$34.34
January	\$46.72
February	\$45.36
March	\$39.57
April	\$38.51
May	\$36.58

**Ameren Energy, Average 2008 Prices**

<b>2008</b>	
June	\$79.09
July/August	\$104.35
September	\$76.19
October, November, December	\$73.13
January/February	\$79.33
Annual	\$59.73