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November 17, 2017

Mr. Anthony M. Star
Mr. Mario Bohorquez
Illinois Power Agency
Michael A. Bilandic Building
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Re: Commonwealth Edison Company's Comments on the Illinois Power Agency's Draft Long-Term Renewable Resources Procurement Plan

I. Introduction

Pursuant to Section 16-111.5(b)(5)(ii)(C) of the Public Utilities Act ("PUA"), Commonwealth Edison Company ("ComEd"), by its counsel, respectfully submits these comments ("Comments") on the Illinois Power Agency's ("IPA" or "Agency") Draft Long-Term Renewable Resources Procurement Plan ("Draft Plan" or "DP"), which was circulated by the IPA on September 29, 2017, for public review and comment. ComEd regrets that its Comments were not able to be submitted on November 13th due to health issues.

Although the enactment of the Future Energy Jobs Act ("FEJA")[1] has placed considerable demands on the IPA regarding the preparation and filing of multiple procurement plans under expedited timeframes, the Agency has nevertheless prepared a well-written and thorough Draft Plan that comprehensively addresses FEJA's numerous new and modified

[1] *See* Public Act 99-0906.

provisions regarding the procurement of renewable energy credits ("RECs") under Illinois' renewable portfolio standard ("RPS"). Where a question or ambiguity exists, the Draft Plan clearly identifies areas of uncertainty and seeks feedback from stakeholders. The Draft Plan also wisely anticipates that FEJA's new Adjustable Block Program and low-income Illinois Solar for All Program ("ISAP") must include customer protections from inception, and to this end proposes detailed safeguards designed to elevate customer education and awareness while minimizing confusion and the potential for unscrupulous and deceptive marketing or contracting practices.

While ComEd is generally supportive of the Draft Plan, ComEd offers comments designed to clarify, correct, or more fully explain certain portions of the Draft Plan. In particular, ComEd appreciates the IPA's invitation to stakeholders to fully explore and comment on the Adjustable Block Program's proposed REC pricing model and inputs, and to this end proposes certain corrections to the model's assumptions and inputs. Regarding the Adjustable Block Program, Community Renewable Generation Program, and ISAP, ComEd also identifies several legal and policy issues associated with including within these programs those distributed generation projects that are located in the service territories of municipal utilities and rural electric cooperatives. ComEd's silence at this time regarding any particular issue should not be interpreted as agreement with all statements, approaches, calculations, or recommendations made in the Draft Plan pertaining to that issue. For the convenience of the IPA and other stakeholders, a redlined version of the Draft Plan reflecting ComEd's comments, where applicable, is attached hereto as Attachment A.

II. Comments on Draft Plan

A. Chapters 1-2: Introduction and Legislation/Regulatory Requirements of the Plan

Because the first two chapters of the Draft Plan introduce and summarize the subsequent chapters that follow, ComEd will address issues previewed in Chapters 1 and 2 in the applicable substantive chapter.

B. Chapter 3: RPS Goals, Targets, and Budgets

Statewide Goals (Sec. 3.1). On page 43 of the Draft Plan, the IPA states the following:

> Specific numerical targets included in the Act are statewide targets which do not specify individualized REC targets for each utility. The Agency thus proposes to conduct the procurement of RECs under this Plan based on statewide RPS goals and targets, rather than viewing those targets by utility. The cost of the RECs associated with RPS procurements will be allocated to each utility, through REC procurement contracts, based on each utility's Renewable Portfolio Standard Budget.

DP at 43. While ComEd shares the IPA's "statewide" understanding of the RPS targets, ComEd believes that it would also be helpful to clarify that the REC procurement contracts themselves will be specific to each utility and independent of supplier performance under other utilities' contracts, just as they were in the Initial Forward Procurement held on August 31, 2017. *See* Attachment A at 43.

Existing REC Portfolios – RECs Already Under Contract (Sec. 3.9). Section 3.9 of the Draft Plan presents a table for each utility that identifies the utility's existing REC portfolio, which is comprised of RECs under contract from prior IPA procurements. DP at 48-49. For completeness and to avoid confusion, ComEd recommends that the contracts executed by the utilities as a result of the Initial Forward Procurement conducted on August 31, 2017, and the Fall 2017 DG procurement conducted on October 13, 2017, be included in Section 3.9's tables.

Administrative Costs (3.17). ComEd appreciates the Draft Plan's clarity regarding how administrative costs will be accounted for under the Plan and RPS budgets. Specifically, the Draft Plan observes that the utility's administrative costs will be recovered "[t]hrough the budgets established under the rate impact cap and the associated tariffs for the collection of funds…. As a result, annual procurement budgets based only on REC costs would be inaccurate, and some estimate of associated administrative expenses must be included and taken into account." DP at 26. Later, the Draft Plan "proposes initially to set aside 3% of the budget for these administrative expenses…." DP at 55.

Consistent with these provisions, ComEd recommends that equation (3) on page 55 of the Draft Plan – which calculates the remaining available RPS budget for a given delivery year – be revised to include the subtraction of the 3% administrative costs that will be set aside. DP at 55. Because additional monies from the RPS Budget must be allocated to ISAP and job training initiatives, moreover, it may be helpful to also subtract these amounts, but ComEd leaves that determination to the IPA's discretion. *See* Attachment A at 55.

Unspent Funds and ISAP Funding Shortfall (Sec. 3.17.1). In several places, the Draft Plan addresses FEJA's unique provisions regarding the revenue collected by the utilities through their cost recovery tariffs for purposes of funding the procurements and programs included in the Draft Plan. First, FEJA requires utilities to retain and roll over unspent funds until May 31, 2021 (*i.e.*, during the first four delivery years), and further authorizes the utilities to spend these funds throughout the four-year period. 220 ILCS 5/16-108(k). This approach recognizes that the Plan will not be approved until the end of the first delivery year, and also anticipates the ramp-up period required for new wind and solar projects to be energized. Because funds collected during the first delivery year can be spent in the subsequent three delivery years, the first delivery year's funds that remain unspent at the close of the year are not forfeited and can be fully applied during the next three delivery years to meet the RPS goals. Following the close of the four-year period, the Commission will conduct a reconciliation of this period. *Id.* Second, during the first three delivery years, up to half of any unspent funds in a delivery year can be applied to an ISAP funding shortfall, as defined by FEJA. *Id.* The statute thus provides an alternative source of ISAP funding in the event that the monies expected to be available in the Renewable Energy Resourced Fund ("RERF") prove to be inaccessible.

While the Draft Plan generally reflects an accurate summarization of these provisions, ComEd proposes the following clarifications to ensure accuracy:

- On page 18, footnote 56, the text should be revised to reflect that the application of excess collections to ISAP only occurs in the event of a funding shortfall.
- On page 56, the discussion of the "roll over" of unspent funds should clarify that this practice terminates May 31, 2021, and application of roll over funds only applies through May 31, 2021.

These revisions are reflected on pages 18 and 56 of Attachment A.

C. Chapter 5: Competitive Procurement Schedule

New Wind/New Solar Balancing Requirement (Sec. 5.7.1). To ensure that the procurement of RECs from new solar projects keeps pace with the procurement of RECs from new wind projects, the IPA Act imposes the following balancing requirement:

> If, at any time after the time set for delivery of [RECs] pursuant to the initial procurements in items (i) and (ii) of this subparagraph (G), the cumulative amount of [RECs] projected to be delivered from all new wind projects in a given delivery year exceeds the cumulative amount of [RECs] projected to be delivered from all new photovoltaic projects in that delivery year by 200,000 or more [RECs], then the Agency shall within 60 days adjust the procurement programs in the long-term renewable resources procurement plan to ensure that the projected cumulative amount of [RECs] to be delivered from all new wind projects does not exceed the projected cumulative amount of [RECs] to be delivered from all new photovoltaic projects by 200,000 or more [RECs], provided that nothing in this Section shall preclude the projected cumulative amount of [RECs] to be delivered from all new photovoltaic projects from exceeding the projected cumulative amount of [RECs] to be delivered from all new wind projects in each delivery year and provided further that nothing in this item (iv) shall require the curtailment of an executed contract. The Agency shall update, on a quarterly basis, its projection of the [RECs] to be delivered from all projects in each delivery year. Notwithstanding anything to the contrary, the Agency may adjust the timing of procurement events conducted under this subparagraph (G). The long-term renewable resources procurement plan shall set forth the process by which the adjustments may be made.

20 ILCS 3855/1-75(c)(1)(G)(iv). Because "the latest date for first delivery of RECs from the initial forward procurements" is June 1, 2021, the IPA interprets the balancing requirement to apply to its planning process only after this date. DP at 30.

Deliveries of RECs from the Initial Forward Procurement will begin with the 2019 delivery year, however, and ComEd therefore recommends that the IPA begin applying the balancing requirement following these deliveries. Given the obvious importance to the General Assembly of balancing the procurement of RECs from these two new project types, ComEd recommends that the IPA adopt an interpretation that implements and applies this requirement at the earliest, rather than latest, possible date. This will ensure that the volumes of RECs from new wind and new solar projects remain in sync and thus give full effect to the General Assembly's intent. *See* Attachment A at 30.

Prioritization of New RECs (Sec. 5.8.3). The Draft Plan also identifies the Agency's election to "look beyond RECs from new wind and new photovoltaic projects to meet the annual RPS goals." DP at 84. Specifically, the IPA "understands the goal and spirit of P.A. 99-0906 to be to prioritize procurements for RECs that result in the development of new renewable energy facilities over procuring RECs from existing facilities. While RECs from Forward Procurements could be more expensive than RECs from Spot Procurements, this prioritization leads the Agency to next propose procurements focused on developing new renewable energy facilities that are not wind or photovoltaic." *Id*.

As the IPA acknowledges, these procurements may be more costly, and ComEd further notes that it is unclear whether this proposal might result in a failure to achieve the statutory RPS targets. Given the substantial impacts this policy election could have, ComEd recommends that the IPA more fully present and explain this proposal in its petition accompanying its proposed plan, and include a specific request that the Commission rule on this particular proposal.

D. Chapters 6, 7, & 8: Adjustable Block Program, Community Renewable Generation Projects, and Illinois Solar for All Program

1. Inclusion of projects in municipal utility, rural electric cooperative, and Mt. Carmel service territories

In Chapter 2 of the Draft Plan, the IPA acknowledges that the RPS goals do not apply to load served by municipal electric utilities, rural electric cooperatives, or Mt. Carmel Public Utility, and those entities do not have renewable energy procurement obligations under Illinois law. DP at 21-22. This is consistent with the PUA's exclusion of municipally owned utilities and rural electric cooperatives from the definition of "public utility." 220 ILCS 5/3-105. The customers of these entities thus do not pay any charges or fees to support or fund the programs to be offered under the Draft Plan, including the Adjustable Block Program, Community

Renewable Generation Program, and Illinois Solar for All Program (collectively, "Programs"). Yet, the Draft Plan proposes to allow projects from these entities' service territories to participate in the Programs. As explained below, this approach raises legal and policy issues, not least of which is the apparent lack of statutory authorization to require the retail customers of electric utilities to subsidize distributed generation projects within the service territories of entities that are not otherwise subject to the RPS and whose customers are not paying for the benefits.

First, Section 1-75(c)(1)(L)(ii)-(iii) of the IPA Act ties the payment requirement for RECs purchased under the Adjustable Block Program to the time that the project is interconnected to the distribution system of the contracting electric utility. 20 ILCS 3855/1-75(c)(1)(L)(ii)-(iii). Because those projects interconnected to the systems of municipal utilities, rural electric cooperatives, and Mr. Carmel are not interconnected to a contracting electric utility (Ameren, ComEd, or MidAmerican), it is unclear how the payment requirement could be applied. *See also* 20 ILCS 3855/1-56(b)(3) (tying payment of RECs under ISAP to the time that "the device is interconnected at the distribution system level of the utility and is energized").[2]

Second, regarding the Community Renewable Generation Program, the Draft Plan concedes that the definition of "subscribers" (to the community renewable generation projects) requires that they "'take[] delivery service from an *electric utility*,' which as defined in the IPA Act does not include cooperative and municipal utilities." DP at 128 (emphasis in original). Because this requirement ensures that subscribers can take advantage of FEJA's new *electric utility* net metering provisions available to community renewable generation projects, the Draft

[2] The Draft Plan also states that "[t]he Program Administrator will determine which utility each contract will be with. While a batch may contain projects in multiple utility service territories, the Program Administrator will strive to assign contracts to the utility where the bulk of the projects are located, but may not always be able to do so …." DP at 114. In light of the statutory requirement tying the utility's payment obligation to the date of interconnection to the utility's system, ComEd does not understand how the proposed assignment of contracts, including those with projects interconnected to municipal utilities and rural electric cooperatives, comports with the law.

Plan's proposed solution is to require "actions be taken by the rural electric cooperative or municipal utility" to offer the kinds of net metering, billing, and crediting services required of electric utilities. At the same time, however, the Draft Plan acknowledges that these "entities [are] not regulated by the state, [and] are free to choose to take these actions or decline to take these actions…." *Id.* ComEd thus shares the IPA's concerns, and also adds that it is unclear how the IPA or Commission could ensure that a municipality or cooperative is abiding by the net metering, billing, and payment provisions proposed in the Draft Plan, which does not apply to these entities.

Finally, with respect to ISAP, the Draft Plan states that the law "is silent on how to allocate RECs from projects located in the service territories of municipal utilities, rural electric cooperatives, or Mt. Carmel Public Utility," and goes on to propose to allocate to a utility's RPS goals only those RECs procured through contracts with that utility. DP at 144. As a result, RECs from projects procured through contracts with the IPA would not be applied to the utility's RPS goals. Putting aside the concerns previously described, this proposal is inconsistent with additional provisions of the law and other Programs, including the following: (i) Section 1-56(b)(3) expressly requires that all of the RECs purchased under ISAP – regardless of whether the contract is executed by the utility or IPA – be applied and counted towards the utilities' obligations under Section 1-75(c); (ii) the Adjustable Block Program counts all RECs generated from projects in the service territories of municipal utilities and rural electric cooperatives; and (iii) neither the IPA Act nor PUA provides support for an approach that would use monies collected for the achievement of the State's RPS goals to purchase RECs that do not contribute to those goals.

At bottom, the Draft Plan's proposal to include within the Programs those projects that are located within the service territories of municipal utilities, rural electric cooperatives, and Mt. Carmel faces a number of legal and policy challenges, none of which appears to be readily surmountable. At this time, ComEd thus recommends that these projects be excluded from participating in the Programs. To the extent the IPA or Commission decides otherwise, all RECs must be counted toward the State's RPS goals consistent with the provisions previously identified. Attachment A reflects ComEd's proposed revisions to Chapters 7 and 8 of the Draft Plan to implement this recommendation. Because the revisions to Chapter 6 impact various tables and graphs, ComEd leaves any implementation of the proposed changes to the IPA's discretion.

2. Adjustable Block Program

Transition between Blocks (Sec. 6.3.1). "In order to smooth the transition between blocks, and to avoid unnecessary rushes in the application process," the Draft Plan creates a "soft closing" process that offers a grace period during which projects will continue to be accepted after a block's capacity is filled. DP at 95. While ComEd does not necessarily object to this concept, ComEd would appreciate a more thorough discussion of the issue in the IPA's filed Plan, including whether any safeguards should be added to the soft close process in the event that demand far exceeds the block's capacity.

REC Pricing Model (Sec. 6.4). The Draft Plan cautions that the Adjustable Block Program REC pricing model is preliminary, and underscores that "[t]his Plan is merely a draft for public comment[] and will be further refined." DP at 97. Given this context, "[t]he Agency invites interested parties to explore the data used, the assumptions made, and the model itself, and to provide feedback on them and how they can be improved and/or refined." *Id.*

ComEd appreciates the IPA's transparency regarding the preliminary nature of the REC pricing model, as well as the invitation to review the model and provide feedback. As highlighted below, ComEd has identified errors in the data and values used to establish REC pricing related to ComEd's service territory, and welcomes the opportunity to work with the IPA to ensure the model includes accurate data and assumptions. Examples of values or assumptions that must be corrected include the following:

- Appendix E-1, "Net Metering Value" Tab, rows 20-21: The values reflected for the residential ComEd tariff incorrectly double count the capacity charge. Because this tariff is a fixed price, bundled electric power and energy offering, the cost of capacity is reflected in the Energy Charges presented in row 20. As a result, the addition of Capacity Charges in row 21 results in double counting capacity.
- Appendix E-1, "ComEd Res Rates" Tab: With respect to the Distribution Charge identified in this Tab, the Draft Plan incorporates the Distribution Facilities Charge ("DFC") value applicable to an extremely small portion of ComEd's residential customers – the "Residential Single Family With Electric Space Heat Delivery Class." As such, the DFC value should be revised to reflect that applicable to "Residential Single Family Without Electric Space Heat Delivery Class."
- Income Tax: Because both RECs and the distributed generation rebates issued to nonresidential customers under Section 16-107.6 of the PUA will be taxable, ComEd recommends that the model and its inputs be revised to reflect the tax effects.
- Net Metering Values: ComEd also proposes that the rates used for net metering should be carried out over a 25-year period instead of the 15-year period currently proposed.

Adjustments to REC Prices (Secs. 6.5.3, 6.8). The IPA Act authorizes the Agency to "make prospective administrative adjustments to the Adjustable Block program design, such as redistributing available funds or making adjustments to purchase prices as necessary to achieve the goals of this subsection (c)." 20 ILCS 5/3855/1-75(c)(1)(M). If the modifications to "any price, capacity block, or other program element" do not deviate from the Commission-approved value by more than 25%, then they may take effect immediately and are not subject to Commission review or approval. *Id*.

The Draft Plan includes a discussion of these provisions, and highlights four different events that could prompt a change to Commission approved values. DP at 102, 104-05. Because the statute requires that any changes be made "prospective[ly]", ComEd assumes, and it would be helpful for the Draft Plan to confirm, that a price change would not be applied to a currently open block, but only to the next block to open. This would ensure fair treatment of the bidders in a given block. If the IPA intended a different approach (or that additional provisions would apply), those approaches and provisions, with supporting rationales, should be included in the Plan.

Program Administrator (Sec. 6.10). The Draft Plan notes that "[t]he Program Administrator will operate under a contract with the Agency and may also be reimbursed by the utilities for a portion of the cost of the services provided to them including, but not limited to, the preparation of contracts and review of Annual Reports." DP at 109. While ComEd assumes that the utility reimbursements will be paid by the funds collected by the utility through its Section 16-108(k) tariff, ComEd recommends that the Draft Plan be revised to clearly state that such reimbursements will be made using the 3% set aside for payment of administrative costs. *See* Attachment A at 109.

Batch Process (Sec.6.14). ComEd also proposes several clarifications related to the IPA's batch proposal that are designed to increase administrative efficiency and reduce costs. These include the following:

- After a batch of projects is approved by the Procurement Administrator, the annual number of RECs and payment amount(s) will be provided to the utility by the Program Administrator for purposes of contract preparation.
- Because an Approved Vendor may have multiple batches of projects, utilities may use one master agreement with multiple confirmations for an Approved Vendor.
- The Approved Vendor will designate the batch in GATS for the RECs generated (*i.e.*, the utilities will not track the RECs generated by individual unit).
- Utilities will send a report of RECs delivered by batch (*i.e.*, contract) semi-annually to the Program Administrator.

ComEd also recommends that the Draft Plan permit an increase in the minimum batch size – perhaps up to 500 kilowatts – after three successful batches, which would ensure that the contract volumes are kept to a manageable level. ComEd leaves to the IPA's discretion how best to incorporate these recommendations into the batch-related sections of the Plan.

3. Community Renewable Generation Projects

Utility Responsibilities (Sec. 7.7). Chapter 7 of the Draft Plan concludes with a summary of the utilities' recent tariff filings regarding their community renewable generation net metering tariffs. The Commission approved ComEd's proposed Rider POGCS – Parallel Operation of Retail Customer Generation Facilities Community Supply ("Rider POGCS") in ICC Docket No. 17-0350. As the Draft Plan notes, the Commission's order resolved the contested issues, including an issue regarding indemnification. DP at 136. To ensure that the Draft Plan's summary of the indemnification issue accurately reflects the record in ICC Docket No. 17-0350, ComEd offers clarifying revisions on page 136 of Attachment A.

4. Illinois Solar for All Program

Utilities Annual Funding Available (Sec. 8.4.2). The Draft Plan solicits feedback from stakeholders regarding the interpretation of Section 1-75(c)(1)(O)'s requirement that the Plan must "allocate 5% of the funds available under the plan for the applicable delivery year, or $10,000,000 per delivery year, whichever is greater, to fund the programs." DP at 17, 141. ComEd agrees with the IPA's conclusion that "the intention of this language … is that 5% of utility-collected funds, or $10 million, whichever is greater, would be made available annually for [ISAP] – in addition to whatever may be spent in a given year through the RERF." DP at 17-18.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Mark R. Johnson