

**COMMENTS OF
COMMONWEALTH EDISON COMPANY
ON THE
ILLINOIS POWER AGENCY'S
DRAFT 2014 ELECTRICITY PROCUREMENT PLAN**

September 16, 2013

Table of Contents

I. ENERGY EFFICIENCY..... 2

 A. The Draft Plan’s Recommendations Concerning Feedback Mechanisms
 Are Unnecessary and Unsupported by the Law and Should be Removed 2

 B. Transition Year Program Expansion..... 2

 C. Expansion of DCEO Participation in Incremental Energy Efficiency
 Programs 3

 D. Prioritization and Consideration of Third-Party Bids for Duplicative
 Programs 3

 E. Conditional Approval of Two Duplicative Programs 5

 F. The Plan Should Be Revised to Incorporate These Comments 5

II. LONG-TERM RENEWABLE RESOURCE CONTRACTS 6

 A. The Plan Should Clearly Describe the Process to be Followed Regarding
 Curtailment of Long Term Renewable Resource Contracts 6

 B. Imputed REC Price 7

 C. Portfolio Rebalancing 8

III. CHANGES IN LAW..... 9

IV. PROCUREMENT STRATEGY 10

V. SECOND PROCUREMENT EVENT 10

VI. DEFINITION OF FULLY HEDGED 11

VII. STANDARD CONTRACT FORMS 12

VIII. MISCELLANEOUS ISSUES 13

 A. Demand Response..... 13

 B. Updates to Energy Efficiency Programs..... 13

 C. Updated Potential Study 13

**COMMENTS OF COMMONWEALTH EDISON
COMPANY ON THE ILLINOIS POWER AGENCY'S
DRAFT 2014 ELECTRICITY PROCUREMENT PLAN**

Commonwealth Edison Company (“ComEd”) submits these comments on the Illinois Power Agency’s (“IPA”) Draft 2014 Electricity Procurement Plan (“Draft Plan” or “Plan”) that was posted on the IPA’s website on August 15, 2013, pursuant to Section 16-111.5(d)(2) of the Illinois Public Utilities Act (“PUA”) (220 ILCS 5/16-111.5(d)(2)). For the convenience of the IPA, the Illinois Commerce Commission (“ICC” or “Commission”), and the parties, a redlined version of the Plan reflecting ComEd’s comments is attached hereto as Appendix A.

ComEd commends the IPA for a well-drafted and thorough Draft Plan. ComEd supports the Plan’s proposal to hold two energy procurement events to help account for municipal aggregation uncertainty, and to not conduct any procurement events for renewable energy credits (“RECs”) in 2014. Our comments here focus primarily on energy efficiency and on providing clarification to certain aspects of the Plan in order to make it more consistent with the PUA and the Illinois Power Agency Act (20 ILCS 3855/1-1 *et seq.*) (“IPA Act”). While the comments identify several specific ways to improve the Plan, ComEd’s silence regarding any issue not addressed in these comments should not be interpreted as agreement with all statements, approaches, calculations, or recommendations made in the Plan pertaining to that issue. ComEd reserves its right to make further or additional comments on the Plan when a final plan is submitted by the IPA to the Commission.

I. ENERGY EFFICIENCY

A. The Draft Plan's Recommendations Concerning Feedback Mechanisms Are Unnecessary and Unsupported by the Law and Should be Removed

In evaluating incremental energy efficiency, the Draft Plan seeks Commission guidance on what it considers to be several open issues, setting forth various recommendations which are outside the scope of the law and therefore inappropriate for consideration.

The Draft Plan identifies the first issue as “a lack of an adequate feedback loop in the development of programs for consideration for inclusion in the procurement plan to ensure the statutory goal of ‘fully capturing’ the potential for all achievable cost-effective savings, to the extent ‘practicable.’”¹ Second, the Draft Plan recommends that the 2014 procurement proceeding serve as the forum for developing a “programmatic planning link” between the potential studies and the energy efficiency programs submitted to the IPA. The Draft Plan provides no support for its implication that the current process is either not working or otherwise is inconsistent with the law. To the contrary, Section 16-111.5B(a)(3) requires ComEd to utilize the same stakeholder process that it uses for the development of requests for proposals under Section 8-103 to develop requests for proposals under this section. This process explicitly provides for “input from the Agency” as well as all other stakeholders. Thus, the PUA already provides a programmatic planning link and a “loop mechanism” for stakeholder feedback. Accordingly, the Plan should be modified to delete this section.

B. Transition Year Program Expansion

The Draft Plan notes that an area of concern is the uncertainty “regarding this transition year where the EEPS [Energy Efficiency Portfolio Standard] programs for next year are not yet

¹ Draft Plan, p. 80.

approved.”² ComEd agrees that more clarity surrounding the expansion of programs during transition years would be helpful. Specifically, ComEd believes the most efficient way to address the issue would be for each utility, upon receiving all third party RFPs, to preliminarily identify which programs are likely to be part of the Section 8-103 energy efficiency portfolio, and, in accordance, either add to or expand upon its existing programs in its proposal to the IPA’s energy efficiency portfolio based on upon its anticipated Section 8-103 proposal.

C. Expansion of DCEO Participation in Incremental Energy Efficiency Programs

ComEd agrees with the Draft Plan that clarification regarding the role of the Illinois Department of Commerce and Economic Opportunity’s (“DCEO”) in incremental energy efficiency programs is warranted. Although DCEO’s role to coordinate and implement energy efficiency programs in the EEPS is clearly spelled out in Section 8-103 of the PUA, neither the IPA Act nor Section 16-111.5B of the PUA, which govern the incremental energy efficiency programs subject to this proceeding, indicate that DCEO should have a larger role than any other third party vendor in the IPA process. Accordingly, absent any statutory language to the contrary, it is ComEd’s position that the law requires DCEO to participate in IPA procurement events vis-à-vis the third party RFP process in the same manner as any other vendor.

D. Prioritization and Consideration of Third-Party Bids for Duplicative Programs

The Draft Plan identifies two issues related to the topic of competition between incumbent utility programs and third party RFP programs. Specifically, the Draft Plan notes that there is ambiguity as to (1) “what it means for a third-party bidder’s proposed program to be “competing” with or be “duplicative” of a utility program,” and (2) the “authority of the

² Draft Plan, p. 81.

Commission to reject a third-party bidder's program that is "competing" with or "duplicative" of a utility's program but which otherwise passes the standard for cost-effectiveness."³

On the first issue, ComEd agrees that clarification is warranted as to the proper way to handle programs that are considered "duplicative." In the interests of minimizing market confusion and promoting program quality over program quantity, ComEd recommends that where existing utility-run programs exist, such programs should take priority over bids for substantially similar (*i.e.* duplicative) programs. As to the second, interrelated issue, ComEd recommends that in order to decrease administrative costs and promote market efficiencies, the utilities should similarly have the discretion to decide whether to accept or reject RFPs for substantially similar (*i.e.* duplicative) programs. Section 16-111.5B(a)(5) provides for Commission review and approval of all programs and measures included in the plan. That section does not require the Commission to approve all measures that meet the cost-effective standard. Instead, the PUA gives the Commission the discretion to decide whether the proposed measure fully captures the potential for all achievable savings and is consistent with Section 8-103. It seems evident that if a proposed program merely duplicates an existing program, its ability to capture all achievable savings will be substantially compromised by the competition between multiple programs and will cause market confusion. This results in additional costs to achieve diminishing benefits for the customers. Consequently, ComEd opposes having duplicative programs in the market and believes the Commission has a sound basis to reject the expenditure of additional funds for such programs.

³ Draft Plan, p. 82.

E. Conditional Approval of Two Duplicative Programs

The Draft Plan recommends that the Commission issue a “conditional approval” of two programs that are “substantially identical” to existing programs, which it states that “ComEd is presumably planning on proposing again for the next Section 8-103 three-year plan cycle.” The Plan further offers a “compromise approach recognizing the penalties associated with Section 8-103 plans combined with the uncertainty about approval, the IPA may recommend that the Commission consider conditional approval of the two programs contingent on the ComEd competing programs (or a substantially similar programs) not being a part of the final approved Section 8-103 plan. If the Section 8-103 programs are approved by the Commission then the IPA would recommend that these two programs not be included under Section 16-111.5B.”⁴

ComEd understands and supports the IPA’s intent to include the two duplicative programs if they are not included in the submitted list of 8-103 programs, but in order to improve the efficiency of the process, recommends the Plan be worded such that any programs requested to be conditionally approved are removed if they are not among the programs that ComEd submits to the ICC for approval under Section 8-103.

F. The Plan Should Be Revised to Incorporate These Comments

The language changes to implement ComEd’s proposal are shown in the redlined version of the Plan attached hereto as Appendix A.

⁴ Draft Plan, p. 86.

II. LONG-TERM RENEWABLE RESOURCE CONTRACTS

A. The Plan Should Clearly Describe the Process to be Followed Regarding Curtailment of Long Term Renewable Resource Contracts

The Draft Plan recognizes that “ComEd is anticipated to exceed the IPA Act spending cap [for renewable energy resources based on the Long Term Power Purchase Agreements (“LTPPAs”)] in every year of the five-year projection horizon as it did in the current delivery year, forcing curtailment of ComEd’s LTPPAs,” and that “[t]he spending caps will prevent ComEd ... from committing any additional money to procure renewables for the 2014-2015 delivery year, including specific procurements of wind, photovoltaic and distributed renewables.”⁵ Although ComEd supports this conclusion, the Draft Plan does not detail the process to be followed in curtailing ComEd’s purchases under the LTPPAs.

The 2013 procurement plan proceeding, ICC Docket No. 12-0544, was the first time the IPA was confronted with the need to curtail ComEd’s LTPPAs by virtue of the rate cap set forth in Section 1-75(c)(2) of the IPA Act. Accordingly, the 2013 Procurement Plan included the following directives:

Section 1-75(c)(2) of the IPA Act requires the IPA to reduce the amount of renewable energy resources to be procured for any particular year in order to keep the “estimated” net increase in charges to eligible retail customers below the statutory cap. Therefore, the purchases under the long term renewable contracts may need to be reduced. An estimate of the overall amount is shown in this Plan for both Ameren and ComEd, however the exact amount is uncertain at this time. Both utilities will be submitting updated forecasts in March 2013. In addition, it is unclear how much of the additional energy efficiency measures will be approved by the Commission. Once the Commission has approved this Plan, including the incremental energy efficiency program amounts, and the utilities have submitted further updated forecasts in March 2013 to reflect municipal aggregation activity and any Commission-approved energy efficiency programs, each utility should calculate both the overall amount of the necessary reduction to keep the purchases under the statutory cap, and determine the amount that each long term renewable

⁵ Draft Plan, pp. 100-102.

contract will need to be reduced. Any such reductions should be applied proportionately to the long term renewable contract consistent with the terms of the contracts. This calculation should only be made for the 2013/14 delivery year. Future procurement plans will address the need, if any, for additional reductions. This information should be submitted to both the IPA and the Commission Staff for their review and acceptance. Once the utilities have received written acceptance from both the IPA and the Commission Staff, they may then notify the suppliers under the long-term renewable contracts of the amounts of the reductions. The suppliers will then make the election allowed them under the agreements. Since the reductions under the IPA Act are to be made on the basis of the “estimated” net increase in charges to Eligible Retail Customers, no further reductions in purchases of renewable under the long-term contracts for delivery year 2013/14 will be made based on the actual increases in charges experienced by Eligible Retail Customers during the 2013/14 delivery year. This will serve to promote certainty and materially assist the suppliers in the election they will need to make.⁶

In order to comply with the statutory rate cap and provide greater certainty and clarity for all stakeholders including ComEd and all counterparties to the LTPPAs, ComEd proposes that the IPA include similar language in the 2014 Plan. Including the language recommended in Appendix A will serve to provide all parties with a roadmap of specifically how the curtailment process will work, thereby minimizing the potential for confusion, needless litigation and administrative expense.

B. Imputed REC Price

In addressing the issue of curtailment, the Draft Plan requests that the Commission approve the use of utility hourly customer Alternative Compliance Payments (“ACPs”) “to purchase curtailed RECs at the *imputed REC price*.”⁷ While ComEd agrees with this recommendation, the Draft Plan does not define the term *imputed REC price*. In Docket No. 09-0373, the Commission approved a uniform and forward-looking definition for these terms, when it first authorized the LTPPAs at issue. There, it approved the following language:

⁶ Final 2013 Electricity Procurement Plan, ICC Docket No. 12-0544 (filed April 5, 2013), p. 87-88.

⁷ Draft Plan, pp. 101-102 (emphasis added).

The IPA intends to count the REC portion of the procurement toward the RPS requirements and bill-impact cap. To quantify the annual cost of the RECs for the purpose of the RPS, the Procurement Administrator, in consultation with the IPA, ICC Staff, and the Procurement Monitor shall develop a confidential 20 year forward price curve for energy at the load zone, including the estimated magnitude and timing of the price effects related to federal carbon controls. Each forward curve shall contain a specific value of the forecasted market price of electricity for each annual delivery year of the contract. In every delivery year, the imputed REC component of expenditures under the bundled renewable contracts will be determined as the difference between the expected annual contract expenditures for that year (based on the winning target Contract Quantities and Contract Prices) and the total target Contract Quantities times the forward price curve for each respective load zone for that year.⁸

In the interests of providing greater clarity, minimizing the potential for dispute, and maintaining consistency with how imputed REC prices for hourly ACP purchases have been calculated to date, ComEd requests that the IPA include this definition of *imputed REC price* in this year's Plan to be submitted to the Commission for approval. The language changes to implement ComEd's proposal are shown in the redlined version of the Plan attached hereto as Appendix A.

C. Portfolio Rebalancing

Consistent with the 2013 Commission-approved Procurement Plan, the IPA recommends that the Commission order ComEd to produce updated load forecasts in March, which: (1) will provide a basis for curtailing the renewable energy resources scheduled to be purchased under the LTPPAs if the renewable budget will be exceeded, and (2) will be used to plan the Mid-April 2014 forward hedge procurement event.⁹ In light of the potential changes that customer switching and municipal aggregation may have on ComEd's load forecasts, the March update has historically been used as the basis for a mid-year portfolio rebalancing. However, the Draft

⁸ Appendix K to IPA Motion for Leave to File Supplemental Recommendations for the Procurement Plan; granted November 29, 2009.

⁹ *Id.*

Plan's discussion addressing Portfolio Rebalancing does not identify the criteria by which ComEd's portfolio should be rebalanced.¹⁰ In the interests of providing greater clarity and maintaining consistency with the 2012 and 2013 ICC-approved Procurement Plans, ComEd recommends that the IPA include language in its 2014 Plan specifying that its portfolio is to be rebalanced on the basis of ComEd's March updates, which will take into account ComEd's municipal survey intended to determine how many municipalities have made decisions that will return municipal aggregation customers to ComEd, and how many will reissue an RFP to retain such customers as municipal aggregation customers.¹¹

Similarly, the IPA indicates that it intends to use the annual July forecast, with certain proposed revisions, to determine whether to proceed with the proposed second procurement and to adjust the Commission-approved amounts for that second procurement. The plan should specify that the IPA will do so pursuant to its authority to rebalance the portfolio due to significant shifts in load, and that the criteria for doing so will be the July updated forecast, which will include updated information, as well as an updated municipal survey.

The language changes to implement ComEd's proposal are shown in the redlined version of the Plan attached hereto as Appendix A.

III. CHANGES IN LAW

The Draft Plan contains a section entitled "Changes in Law," which sets forth a hypothetical "'strawman' procurement proposal," in the event some sort of legislative reform is achieved during the pendency of this proceeding that would "result[] in new IPA administered

¹⁰ Draft Plan, pp. 98-99.

¹¹ The Commission's Order in the last procurement docket (Docket No. 12-0544) contains an extended discussion of the appropriateness of using the March updated forecast and ComEd's survey of municipalities concerning aggregation as the criteria for rebalancing load and determining the final curtailment amounts (See Order of December 19, 2012 in Docket No. 12-0544, pp. 67-9, 109-110).

renewable energy procurements for the utilities during the pendency of this Procurement Plan.”¹² While ComEd appreciates the IPA’s efforts to be transparent in its intent, we believe it is premature and inappropriate to include such a section in the procurement plan which essentially invites comments on unknown legislative language. This will likely lead to unnecessary administrative and legal costs as the parties debate hypothetical legislative language. As such, ComEd recommends removing this passage as shown in the redlined version of the Plan attached hereto as Appendix A.

IV. PROCUREMENT STRATEGY

The Draft Plan discusses its consideration of various alternative techniques, such as procurement of full requirements products, options to hedge against load uncertainty and “negawatts.”¹³ Although the Draft Plan does not recommend the use of any of these strategies at this time, consideration of these strategies raises the issue of whether the IPA has the legal authority to procure some of these products. And the ultimate inclusion of these products, if any, in future plans would have to comply with the Standard Wholesale Product standard contained in the PUA.¹⁴

The authority or ability to include such products in a procurement plan need not be addressed at this time given the absence of any proposal to include such products, and the Plan should reflect this.

V. SECOND PROCUREMENT EVENT

In order to mitigate the potential risk of customers switching back to ComEd as a result of expiring municipal aggregation contracts and other factors, the IPA proposes a “second

¹² Draft Plan, p. 103.

¹³ Draft Plan, pp. 86-87, 89-90.

¹⁴ 220 ILCS 5/16-111.5(b)(3)(iv).

conditional procurement event to be held in mid-September 2014 should market conditions and the position of the utilities' supply portfolios warrant it at that time.”¹⁵ While ComEd recognizes the potential benefits of conditionally conducting a second procurement event, the Draft Plan does not succinctly spell out what conditions might trigger a second procurement event. On this recommendation, ComEd makes three clarifying recommendations.

First, because the IPA's proposed goal, which ComEd supports, is to be fully hedged prior to the delivery month, the Plan should establish that the second procurement event will occur unless ComEd's load drops significantly below current projections, such that a second procurement is not cost-effective. The IPA should make this determination in consultation with ICC Staff, the Procurement Administrator, the Procurement Monitor, and the affected utility. Second, in the interests of administrative efficiency and minimizing unnecessary costs, the Plan should require that the second procurement event utilize the same contract and LOC forms as used in the spring procurement. Finally, in order to allow prices for the non-summer period (October – May) to be reset before the period begins, the Plan should note that the timing of the procurement should be staged such that the Commission has sufficient time to approve any new procurement by September 22, 2014.

VI. DEFINITION OF FULLY HEDGED

ComEd supports the IPA's position that the prompt year delivery months should be fully hedged since there is a greater possibility of more load returning to ComEd's fixed price load this plan year due to the significant reduction in headroom between ComEd's price and the prevailing market. In its analysis, the IPA recommends defining fully hedged as 106% of the expected load. This is based on the IPA's analysis showing an average load shape cost of 6%

¹⁵ Draft Plan, pp. 11, 14, 89.

and the rationale that the hedge should be on the cost of the energy procured for customers rather than the volume. ComEd concurs with the IPA's logic in this regard but notes that in past IPA RFPs, there has been a modest premium paid compared to the then-current forwards. As such, ComEd asks that the IPA consider reducing the delivery month hedge amount to 100% from 106% when the implicit cost of the hedge would outweigh the expected risk reduction benefits. ComEd notes that this is likely to be the case in most non-summer months. Changes to the Plan to accomplish this are included in Appendix A.

VII. STANDARD CONTRACT FORMS

In its evaluation of the procurement process, the Draft Plan concludes that of the five process components, the area with the greatest potential for efficiency improvements resulting in lower costs passed along to ratepayers is the development of standard contract forms and credit terms and instruments. ComEd supports this conclusion. Specifically, the Draft Plan states:

The IPA believes that the forms can be further standardized while remaining acceptable to future potential bidders, thus reducing procurement administrator time and billable hours, while shortening the critical path time needed to conduct a procurement event. This is because the forms, terms and instruments have become relatively stable, with fewer comments being received from potential bidders requesting revision or optional terms for each succeeding procurement event.¹⁶

In particular, ComEd believes that additional efficiencies can be gained concerning the use of letter of credit ("LOC") forms in the procurement process, which, as the Draft Plan indicates, have become relatively stable over time. Locking down these forms can benefit all parties – but especially ratepayers, by minimizing the additional legal and administrative expense incurred in each procurement to review minor language changes that are of little value at this point. Accordingly, ComEd wholly supports both standardization and minimizing needless

¹⁶ Draft Plan, p. 105.

review of contract forms and credit terms and instruments and looks forward to participating in continued dialogue on the issue.

VIII. MISCELLANEOUS ISSUES

A. Demand Response

The Draft Plan contains several potentially confusing statements concerning how the PJM capacity market operates and the impacts of demand response programs. Specifically, as written, the Draft Plan could be misinterpreted to indicate that if ComEd were to be required to purchase demand response outside of the PJM auction process, it would somehow reduce ComEd's capacity payment obligation to PJM. Accordingly, ComEd has submitted clarifying language on this point in the attached Appendix A.

B. Updates to Energy Efficiency Programs


Upon further review, ComEd has determined that one of the energy efficiency programs it previously submitted to the IPA has a Total Resource Cost ("TRC") of greater than 1. Accordingly, ComEd has updated Table 7-2 in the Plan, and Appendices C-2, C-3, and C-4 accordingly, which are attached hereto as Appendix C.

C. Updated Potential Study

As required by Section 16-111.5B(a)(3)(A), a recently completed update of the comprehensive energy efficiency potential study is attached hereto as Appendix B.

Dated: September 16, 2013

Respectfully submitted,
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