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Re: Commonwealth Edison Company's Comments on the Illinois Power Agency's
Draft Revised Long-Term Renewable Resources Procurement Plan

I. Introduction

Pursuant to Section 16-111.5(b)(5)(ii)(B) of the Public Utilities Act ("PUA"), Commonwealth Edison Company ("ComEd"), by its counsel, respectfully submits these comments on the Illinois Power Agency's ("IPA" or "Agency") Draft Revised Long-Term Renewable Resources Procurement Plan ("Draft Plan" or "DP"), which was circulated by the IPA on August 15, 2019, for public review and comment. Like the Initial Long-Term Renewable Resources Procurement Plan ("Initial Plan"), the Agency has prepared a well-written and thorough Draft Plan. ComEd appreciates that this update clearly identifies the areas of uncertainty and opportunities for refinement or improvement for which the IPA seeks stakeholder comment. ComEd is generally supportive of the Draft Plan, and thus offers limited comments designed to express specific support for certain proposals or to clarify, correct, or more fully explain certain recommendations advanced in the Draft Plan.

As explained further below, ComEd concurs with the Draft Plan's cautious approach to renewable energy credit ("REC") procurement and budget constraints, and to this end identifies additional factors that may further limit available funding. ComEd also supports the IPA's proposals to review and refine the existing REC contracts used for competitive procurements, the Adjustable Block Program ("ABP"), and the Illinois Solar for All Program ("ISAP"). Regarding the ABP in particular, ComEd agrees with the Draft Plan's proposal to maintain the current community solar waitlist approach, but identifies various concerns and issues associated with collateral and credit proposals and Approved Vendor compliance.

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.

II. Comments on Draft Plan

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

Utilities Budgets (Sec. 3.17.1). In its discussion of the estimated utility budgets over the applicable planning horizon, the Draft Plan notes that "[t]he estimated expenditures presented in [the relevant] tables are intentionally a high-end estimate that assumes all projects contracted to produce RECs are successfully completed and deliver RECs in accordance with the schedule shown in Table 3-10." Draft Plan at 71. According to the Draft Plan, "[t]his allows these tables to portray the most constrained view of RPS budgets, which the Agency believes is the appropriate approach to take for planning purposes." *Id.*

ComEd agrees with the IPA's prudent and cautious approach to budgeting, and adds that the approach could be further strengthened by also factoring in the impact of the first reconciliation of the funds collected by the utilities during the June 1, 2017 through May 31, 2021 period. Specifically, ComEd is concerned that the IPA's analysis assumes that a significant amount of REC payments will be made before June 1, 2021. If that does not occur, however, then any utility over-collections as of May 31, 2021 will be credited back to customers through the reconciliation process, and future payments will thus be limited to the amounts collected by the utilities' during a given delivery year. As a result, this scenario could impose even further constraints on REC procurement and payment, especially with respect to contracts executed under the ABP that require upfront payments within the first several years of the contract.

B. Chapter 5: Competitive Procurement Schedule

Contracts (Sec. 5.3.1). The Draft Plan describes the IPA's concerns regarding the contract structure currently used for competitive procurements:

The Agency is concerned that this contract structure may be confusing and overly complex: with three separate documents, each of which may address the same universe of contract terms, a party reviewing the contract may not fully understand which terms are applicable or may require sophisticated counsel to work through inherent contradictions. The Agency thus believes the development of a new, cleaner, more straightforward REC delivery contract is warranted.

DP at 99. The Draft Plan also notes that the IPA is proposing a similar contract update process for the ABP and ISAP REC contracts.

ComEd shares these concerns, and supports the contract revision process proposed in the Draft Plan, which will comprehensively address the various REC delivery contracts utilized under the Draft Plan. *Id.* While ComEd will address issues unique to the ABP contracts in Section II.C *infra*, common to all contracts is the issue of a project’s failure to proceed toward energization. As part of the contract revision process, ComEd thus recommends that the IPA consider changes to “Article 5: Events of Default; Remedies” of the current Master REC Purchase and Sale Agreement (Ex. J to REC Agreement) that would more fully address early termination contingencies and penalties, whether in existing Sections 5.1 and 5.2 or in a new Section. ComEd also recommends that the penalties and remedies for early termination (*e.g.*, for a failure to proceed toward energization) should be plainly set forth and administratively efficient to enforce.

C. Chapter 6: ABP

Managing Waitlists – Community Solar (Sec. 6.3.3.1). As part of the Draft Plan development process, the IPA explains that it sought stakeholder feedback regarding “how best to manage [the community solar] waitlist going forward.” DP at 114. While the Draft Plan posits that “[t]he simplest, and most straightforward approach would be to simply maintain the existing waitlists and accept projects in that order as additional capacity becomes available,” the Draft Plan also acknowledges that “this approach would not recognize the potential for the Agency to consider additional criteria for community solar projects that could help increase the diversity of projects being developed, nor would it address any potential qualitative differences between applicant projects.” *Id.*

The Draft Plan identifies the alternative proposals submitted by stakeholders, but concludes that these other options are inferior to the current waitlist approach. In particular, ComEd agrees with the IPA's concerns with the proposal to prioritize projects based on the date of their original interconnection agreement. ComEd concurs with the Draft Plan's recognition that, in Illinois, there is no indication that the ability to have achieved an earlier interconnection agreement actually correlates to having a more mature or viable project. As the IPA observes, reliance on the original interconnection agreement date as a proxy for project maturity would only favor earlier-applying projects and not necessarily lead to favoring more mature projects. DP at 114.

Contracts (Sec. 6.7). As noted in Section II.B *supra*, ComEd supports the IPA's proposals to review and refine the REC contracts used for competitive procurements, the ABP, and ISAP. Below ComEd offers additional comment on particular issues that also impact the development of the terms and conditions of the new contracts.

Technical System Requirements and Metering Requirements (Secs. 6.12.1 and 6.12.2). For a DG system that includes a battery, the Draft Plan proposes to require the project to show that either only solar-generated power can be used to charge the battery or the battery's output does not run through the meter used to measure solar output. DP at 136. ComEd finds this proposal to be logical and consistent with current net metering standards and requirements.²

² Under Section 16-107.5 of the PUA, a battery is not an "eligible renewable electrical generating facility." 220 ILCS 5/16-107.5 ("Eligible renewable electrical generating facility" means "a generator that is interconnected under rules adopted by the Commission and is powered by solar electric energy, wind, dedicated crops grown for electricity generation, agricultural residues, untreated and unadulterated wood waste, landscape trimmings, livestock

Batch Contract Approval & Credit Requirements (Secs. 6.14.6 & 6.16.1). In these Sections, the Draft Plan addresses, *inter alia*, issues associated Approved Vendor compliance and the posting of collateral. Below ComEd comments on certain of these issues.

First, like the Initial Plan, the Draft Plan reiterates that, “[o]nce a batch is approved by the Commission, the applicable utility will execute the REC contract. The Approved Vendor will then be required to sign the contract within seven business days of receiving it from the utility.” DP at 147. The Draft Plan newly adds, however, that “[f]ailure to sign the contract may subject the Approved Vendor to discipline under the Program.” *Id.* (emphasis added). While ComEd concurs with the Draft Plan’s pivot towards imposing consequences for noncompliance, the new language does not go far enough to dispel uncertainty regarding when discipline would be imposed and what the consequences might be. Given the IPA’s role and vantage point, ComEd believes that the IPA is best positioned to identify those consequences. Because the utilities do not have the discretion to select the counterparties to the REC contracts, these consequences are an important part of ensuring that the regulatory and procurement processes sufficiently address and minimize the participation of bad actors.

Second, the Draft Plan recommends a clarification to the collateral withholding process to be reflected in the REC contract, which would allow “Approved Vendors to choose for the utility to withhold the collateral amount for each system from the last (or only, if a DG system is 10 kW or smaller in size) REC payment for the system rather than posting the 5% collateral, provided that the project is already completed.” DP at 147. Because the last payment for most systems

manure, anaerobic digestion of livestock or food processing waste, fuel cells or microturbines powered by renewable fuels, or hydroelectric energy.”)

will not occur for four years, ComEd believes the Draft Plan's reference to the last REC payment, as opposed to first REC payment, may be a typographical error given that it would leave the utility counterparty without collateral for several years of the contract. ComEd thus recommends that the Draft Plan be revised to provide for the collateral to be withheld from the first, not last, REC payment.

Relatedly, with respect to the option to withhold collateral from the only REC payment made to systems 10 kW or smaller, ComEd recommends that the Agency considering eliminating this option entirely. In practice, very few systems fit within this narrow, small project category, and it is administratively difficult for the utility to track the collateral obligation when withheld in this way. Because a system must be energized to qualify for this option, moreover, the contingency offers very little benefit (or float) between contract execution (when collateral is typically due) and the REC payment (from which collateral is withheld under the option at issue), typically just a couple of months. At bottom, whatever small benefit might be associated with the *de minimis* extension of the date when collateral is paid is outweighed by the years long administrative burden associated with this option.

Finally, the Draft Plan sets forth the procedure that Approved Vendors must follow to exercise one of the collateral withholding options presented in this Section 6.14.4. One of these steps requires the Approved Vendor to submit the Part II application to the Program Administrator within one week of Illinois Commerce Commission ("Commission" or "ICC") approval. "If the Program Administrator determines that a timely-submitted Part II application requires more than 4 calendar weeks for review, the Program Administrator will recommend that

the contracting utility extend the collateral payment deadline.” DP at 147. Yet, the Draft Plan purports to leave “the final decision about whether to offer an extension in time for collateral payment [] with the contracting utility.” *Id.* Similar to ComEd’s concerns regarding when and how a noncompliant Approved Vendor would be subject to discipline (*see* discussion *supra*), here, too, the Draft Plan should be revised to remove uncertainty and clearly articulate when an extension is appropriate (and if so, for what period). Administering collateral requirements based on clearly defined contract terms, rather than utility discretion, will help ensure fair and consistent implementation.

Third, with respect to collateral payment terms more generally, ComEd recommends that the timing of when the utility receives the collateral be revised to ensure a utility is compensated when a project fails to energize. Specifically, ComEd proposes that collateral be posted after the ICC approves the batch but before the utility executes the contract. The sequence of events would thus proceed as follows: (i) the Commission approves the batch/product orders; (ii) the utility sends collateral notices to the applicable Approved Vendors; (iii) the Approved Vendors provide collateral within 3 business days; (iv) upon receipt of collateral, the utility executes the contract documents and submits them to the Approved Vendors; and (v) the Approved Vendors execute the contract documents.

Proposed Alternative Wording

The second, third, and fourth paragraphs on page 147 of the Draft Plan should be modified as follows:

Once a batch is approved by the Commission, the applicable utility will send the collateral notices to the applicable Approved Vendors, and the Approved Vendors will provide the collateral to the utility within 3 business days. Upon receipt of the collateral, the applicable utility will execute the REC contract documents and submit them to the Approved Vendor. The Approved Vendor will then be required to sign the contract within seven business days of receiving it from the utility.³⁹⁰ Failure to sign the contract ~~may will~~ subject the Approved Vendor to discipline under the Program, under terms to be set forth in the Approved Vendor application. The Agency proposes to develop these terms as part of the process to update the REC contracts. The collateral requirement to be held by the utility, equal to 5% of the total contract value, will be required in the form of either cash or a letter of credit with the utility ~~within 30 business days of Commission approval of the contract.~~

For this draft Revised Plan, the Agency recommends a clarification, and alternative, to the collateral withholding process to be reflected in the updated REC contract (as discussed in Section 6.7) allowing the Approved Vendor to choose for the utility to withhold the collateral amount, for each system greater than 10 kW, from the last first ~~(or only, if a distributed generation system of 10 kW or smaller in size)~~ REC payment for the system rather than posting the 5% collateral under the certain circumstance of a project that is already completed. To exercise this option, the project must have an interconnection date as approved by the interconnecting utility prior to Commission approval of the batch the project is contained in, and also have ~~received~~ submitted its Part II application approval to from the Program Administrator within at least 5 2 business days ~~after such Commission approval before collateral is due.~~ The Program Administrator must notify the contracting utility no later than 1 business day after the Program Administrator receives the Part II application, and the utility shall extend the collateral payment deadline for the time period specified by the Program Administrator that is required to reach a determination on the application.

~~To make use of this option, the Approved Vendor should submit the Part II application no later than one week after ICC approval. If the Program Administrator determines that a timely submitted Part II application requires more than 4 calendar weeks for review, the Program Administrator will recommend that the contracting utility extend the collateral payment deadline. However, the final decision about whether to offer an extension in time for collateral payment rests with the contracting utility.~~

The first paragraph on page 152 of the Draft Plan be modified as follows:

An Approved Vendor is required to post collateral equivalent to 5% of the total contract value within ~~30~~ 3 business days of when each Batch's contract (or

product order) is approved. The Approved Vendor may choose for the utility to withhold the collateral amount for each system from the ~~last-first~~ REC payment for the system if the system is greater than 10 kW in size (~~or only REC payment for small systems~~) in exchange for not needing to maintain the ongoing collateral requirement after the system is energized. In this situation, the collateral would be reduced as described below, and fully returned at the end of the contract (net any amounts that were drawn to meet contractual obligations). For the avoidance of doubt, systems that are not energized with a Program Administrator Part II approval ~~within 30 business days of Commission approval of the contract~~ must post collateral in the amount of 5% of the total contract value by cash or letter of credit by the ~~30-business-day~~ applicable deadline. Such systems are not able to take advantage of withholding the collateral from the ~~last-first~~ REC payment until such time as the project is energized with Program Administrator Part II approval. As systems are energized, this collateral amount(or deferred payment) will be maintained through the life of the contract, and can be reduced in the later years of the contract when the collateral requirement exceeds the remaining value of the contract. This requirement will be maintained at the portfolio level, not the individual contract or system level.

D. Chapter 8: ISAP

Coordination with Job Training Programs (Sec. 8.10). ComEd also supports the Draft Plan's proposal to require ISAP Approved Vendors to document the use of job trainees, and to provide a summary of their work to the Program Administrator. DP at 198. ComEd appreciates the inclusion of this proposal, which will strengthen efforts to connect job trainee graduates with Approved Vendors across the State.

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

Very truly yours,



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