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September 14, 2016

**VIA E-MAIL**

Mr. Anthony M. Star  
Mr. Mario Bohorquez  
Illinois Power Agency  
Michael A. Bilandic Building  
160 North LaSalle Street, Suite C-504  
Chicago, Illinois 60601

Re: Commonwealth Edison Company's Comments on the  
Illinois Power Agency's 2017 Draft Procurement Plan

Pursuant to Section 16-111.5(d)(2) 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”) 2017 Draft Procurement Plan (“Draft Plan”), which was circulated by the IPA on August 14, 2016 for public review and comment. ComEd commends the IPA on its well written and thorough Draft Plan. While ComEd is generally supportive of the Draft Plan, ComEd offers several comments designed to clarify, correct, or more fully explain certain portions of the Draft Plan. 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 is attached hereto as Attachment A.

### **1. ComEd Renewable Resource Supply and Procurement (8.1.2)**

With respect to Table 8-2, ComEd notes that the Purchased Wind amounts do not include 22 distributed generation (“DG”) wind renewable energy credits (“RECs”) that were purchased under the 2015 Fall Procurement for 2017/2018, 2018/2019, and 2019/2020. As a result, the Remaining Targets for Wind are overstated by 22 megawatt-hours. Attachment A proposes revisions to Table 8-2 to account for these purchases. *See Attachment A at 97.*

### **2. Energy Efficiency**

#### **a. Clarification of Programs Proposed to Be Approved (9.6, 9.6.6)**

Appendix C to the Draft Plan identifies the 26 third-party energy efficiency programs that vendors bid into the ComEd request-for-proposals process (after eliminating a bid submitted in error), as well as the 5 proposed ComEd-managed energy efficiency programs. As the Draft Plan notes, ComEd and interested stakeholders then screened the 26 programs for cost effectiveness, duplication, and minimum performance expectations, which resulted in ComEd proposing 16 programs for inclusion in the Draft Plan. Draft Plan at 126-127. Similarly, the Draft Plan accurately observes that ComEd is not recommending that any of these remaining 16 programs be excluded based on either performance or savings risk. *Id.* at 127-128.

To ensure that the Draft Plan fully captures ComEd’s recommendations and the nature of Appendix C, ComEd recommends that the Draft Plan be revised in two instances. *See Attachment A at 126, 130.*

#### **b. Vendor Contracting**

***Impact of Docket No. 14-0567 on Pay-for-Performance Contracting.*** ComEd appreciates the Draft Plan’s thoughtful and important discussion regarding the ongoing issues associated with third-party programs and pay-for-performance contracts. During last year’s proceeding to approve

the Agency's 2016 Procurement Plan in Docket No. 15-0541, the parties addressed issues associated with underperforming third-party vendors, which was prompted by the Commission Staff's proposed disallowance in a separate docket (Docket No. 14-0567) regarding costs associated with an IPA energy efficiency program vendor that unexpectedly became insolvent. While Staff proposed that utilities withhold payment from the vendors until final evaluation results are known, the Agency, ComEd, and others cautioned that this approach could have a chilling effect on vendors' ability to participate in IPA energy efficiency programs. Indeed, evaluation results can take years to finalize, which would leave the vendors without payment during this time. In its order in Docket No. 15-0541, the Commission wisely rejected "Staff's proposals to require the utility to withhold payment and to disallow under-performing programs." *Illinois Power Agency*, ICC Docket No. 15-0541, Final Order (Dec. 16, 2015) ("*2016 Procurement Plan Order*") at 110. As the Draft Plan observes, however, the Commission nevertheless went on to disallow the costs associated with the vendor that became insolvent. *In re Commonwealth Edison Co.*, ICC Docket No. 14-0567, Final Order (June 21, 2016). In an abrupt departure from the *2016 Procurement Plan Order* issued just six months prior, the Commission disallowed costs associated with this vendor because ComEd had not withheld payment from the vendor. *Id.* at 29-30.

In light of the concerns previously articulated by the Agency, ComEd, and others regarding the undesirable impacts of Staff's proposal on IPA energy efficiency programs, the Draft Plan includes a discussion of the utilities' actions in response to these orders and a preliminary analysis of the impacts of these actions. Specifically, the Draft Plan notes that ComEd and Ameren have revised their pay-for-performance contracting approaches to impose the more stringent payment terms recommended by the Commission. Ameren introduced a surety bond requirement for winning bidders, and the Draft Plan questions, and seeks comment regarding, whether this new

requirement could have played a role in the decline in the number of bids Ameren received as compared to the prior year: “It is unclear to the Agency whether a measure such as surety bonds is necessary given the pay-for-performance nature of Section 16-111.5B energy efficiency contracts, and if a surety bond requirement produces a chilling effect on participation, it could actually have a net negative impact on ratepayers by reducing the number of cost-effective programs included in the IPA’s electricity procurement plan.” Draft Plan at 116. With respect to ComEd, the Draft Plan correctly observes that “ComEd has implemented a stricter pay for performance model as a reaction to the implications of the disallowance of expenses from a prior Section 16-111.5B program whose vendor went bankrupt.” *Id.* at 126. The Draft Plan further states that “[i]t is not clear to the IPA if this model, which can result in delays in payment to vendors, inhibited the level of bidding in response to the ComEd RFP.” *Id.*

***Opportunity for Commission Clarification and Guidance.*** Given the conflicting Commission guidance on pay-for-performance contracting – the most recent of which encourages utilities to withhold funding from vendors or face disallowance risk – ComEd shares the IPA’s confusion and concerns about the viability of the IPA third-party energy efficiency programs going forward. In particular, ComEd concurs with the Agency’s view that a careful weighing of interests must be undertaken here: “While the IPA appreciates that the ICC must consider whether utilities prudently manage their expenditures, balance must be achieved between necessary risks to achieve cost-effective energy reductions and completely insulating ratepayers or shareholders from any lost expenses.” Draft Plan at 114. ComEd also joins the Draft Plan’s recommendation “for additional clarity to be provided from the Commission about what terms and conditions utilities should include in their contracts offered to vendors, and such clarity could also increase vendor confidence in the program structure.” *Id.* Because the IPA energy efficiency programs include

both ComEd-managed programs and third-party managed programs, moreover, the Commission should provide guidance on the terms and conditions of all contracts employed by the utilities to retain vendors, whether the program is managed by the utility or a third party.

***Proposed Revisions to the Draft Plan.*** As reflected in Attachment A, ComEd has included proposed changes to the Draft Plan that elevate and identify the third-party vendor and contracting issues as key policy issues to be decided by the Commission in this docket. To this end, ComEd proposes that the Draft Plan include additional discussion regarding the procedural history and relevant Commission orders on these issues, as well as descriptions of the utilities' proposed contracting approaches for both utility-managed and third-party managed programs. Specifically, ComEd proposes that the Draft Plan be revised to highlight key terms of its vendor payment provisions in both its pay-for-performance contracts and its contracts for ComEd-managed programs. These include the following:

- ***Pay-for-Performance Contracting:*** Since the inception of the IPA third-party energy efficiency programs, ComEd has executed pay-for-performance contracts with the vendors whose programs are approved by the Commission in an IPA procurement plan. These contracts include standard terms and conditions, as well as a specific scope of work that describes the energy efficiency program to be offered, the promised kilowatthour savings, budgeting, reporting requirements, invoicing, and payment terms. As a pay-for-performance contract, moreover, the vendor is required to give back funds in proportion to any shortfall in promised kilowatthour savings, as determined by the independent evaluator. Under the original version of these contracts, vendors could begin receiving payment to cover start-up costs incurred prior to the commencement of the planning year, and also

received in-progress payments throughout the year. At the end of the year, expenses were “trued up” under the pay-for-performance structure based on the actual net kWh savings achieved by the program as validated by the independent evaluator.

In response to the disallowance approved by the Commission in ICC Docket No. 14-0567, ComEd has revised its pay-for-performance contracts to eliminate payment of start-up costs, and has also implemented enhanced verification and withholding provisions. Specifically, ComEd will only pay 90% of verified savings for those measures whose energy savings have been “deemed” by the Illinois Technical Reference Manual. If the measure’s energy savings have not been deemed, ComEd will only pay 75% of the verified savings for such measure.

- ***Contracting and Payment Process for ComEd-Managed Programs:*** Several of the programs ComEd proposes for this Draft Plan are ComEd-managed programs (as opposed to third-party administered programs). In other words, these programs are similar in structure to those ComEd implements and manages under its overall energy efficiency portfolio and its various programs and program elements, as approved by the Commission under Section 8-103 of the PUA. For ComEd-managed programs, ComEd relies on a broad network of third-party vendors to assist with the implementation of its energy efficiency plans (*e.g.*, marketing, outreach, engineering and technical analysis, incentive fulfillment, inspections, appliance pick-up, data tracking). Each contract that ComEd executes with these vendors contains a unique and well-defined scope of work that clearly articulates the vendor’s specific tasks and deliverables. Each contract also includes key

performance indicators, which measure the vendor's performance under various metrics related to the contract's tasks and deliverables (*e.g.*, safety, customer experience, timeliness of rebates, data accuracy). Vendors generally submit invoices to ComEd on a monthly basis for the work performed during the prior month. Subject to ComEd's verification of the accuracy of the invoice and that the goods or services were delivered, ComEd will typically pay invoices within 45 days, and will expedite payment if the invoice is for rebate and incentives reimbursement.

To assist the Commission in providing additional clarification regarding contract terms and conditions, ComEd recommends that the Draft Plan also be revised to attach the contract templates that the utilities propose to execute with third-party vendors, whether they are pay-for-performance contracts related to third-party managed programs or contracts related to ComEd-managed programs. To this end, ComEd has attached the following contract templates to its Comments:

- Attachment B: Third Party-Managed Program Terms and Conditions
- Attachment C: Third Party-Managed Program Scope of Work
- Attachment D: ComEd-Managed Program Master Terms and Conditions for the Purchase of Materials and Services
- Attachment E: ComEd-Managed Program Master Terms and Conditions for Consulting and Professional Services
- Attachment F: ComEd-Managed Program Scope of Work

This approach will ensure that the Commission can review and approve all relevant contracts, which will provide the clarity and certainty required by the utilities, vendors, and stakeholders.

In addition, ComEd notes that it did not introduce its revised pay-for-performance contracting requirements until after the close of the bid submittal deadline. As a result, it was not possible to evaluate the impacts of this new requirement on the RFP conducted for the 2017 Draft Plan. ComEd thus recommends that the Draft Plan be revised to reflect this timing and that the impacts of the new requirements will not be able to be evaluated until next year.

ComEd revisions are reflected on pages 5-6, 15, 114-116, 127, and 130-132 of Attachment A.

**c. Miscellaneous Clarifications and Corrections**

***Duplicative Program (9.6.4).*** In Attachment A, ComEd offers a clarifying revision to the last sentence of this section to remove ambiguity. *See* Attachment A at 128.

***ComEd Identification of Performance Risk (9.6.5).*** ComEd concurs with the important point conveyed in footnote 273 on page 129 of the Draft Plan (originally footnote 272 on page 128), and recommends that it be included in the body of the Plan. *See* Attachment A at 129.

***Tables 9-4 and 9-5.*** ComEd notes that the TRC values in Table 9-4 do not include the administrative adder, while the TRC values in Table 9-5 do include the adder. In addition, Tables 9-4 and 9-5 do not specify whether the net megawatt-hour savings at the busbar or at the meter. ComEd's proposes revisions on pages 128 and 133 of Attachment A to clarify these issues.



**3. Appendix F**

In Table F-10 of Appendix F, certain values in the Residual Volume (MW) column are incorrect. ComEd thus recommends that the values for the following Contract Months be revised, as follows: 1,313 (Nov-17); 1,540 (Jan-18); 1,450 (Feb-18); 2,472 (Jun-18); 1,800 (Oct-18); 2,006 (Nov-18); and 2,286 (Dec-18).

Very truly yours,

A handwritten signature in black ink, appearing to read 'M. Johnson', with a long horizontal stroke extending to the right.

Mark R. Johnson