STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	:	**Docket No. 09-0373**
Petition for Approval of Initial Procurement Plan	:	

THE ILLINOIS POWER AGENCY'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL RECOMMENDATIONS FOR THE PROCUREMENT PLAN

The Illinois Power Agency ("IPA"), pursuant to Section 200.190 of the Commission's Rules of Practice, 83 Ill.Adm.Code § 200.190, hereby requests leave to file *instanter* its proposed supplemental recommendations to the September 30, 2009 Procurement Plan ("Plan") filed with the Illinois Commerce Commission ("Commission"). This supplement is intended to clarify and provide additional detail regarding the conflicting issues surrounding the proposal to procure long-term renewable resources. The IPA states as follows in support of this Motion.

1. On September 30, 2009, the IPA filed its Plan to procure energy supplies for the 2010-2014 planning years. In the Plan, the IPA proposed to procure long-term renewable resources as a hedge against carbon risk.

2. On October 5, 2009, parties to the proceeding filed their objections to the Plan. Commonwealth Edison Company ("ComEd"), Ameren Illinois Utilities ("Ameren") and the Staff of the Commission all raised objections to an alleged lack of details concerning the proposal to procure long-term renewable resources.

3. On October 16, 2009, the IPA filed a response to these objections in which the IPA provided many more details concerning the proposal to procure long-term renewable resources.

4. On October 26, 2009, the parties to this proceeding submitted replies to the IPA's response. The replies submitted by ComEd, Ameren and the Staff raised continuing concerns with the IPA's proposal to procure renewable resources.

5. Also on October 26, 2009, ComEd filed a Motion for Reconsideration and to Hold Limited Hearings. In this motion, ComEd requested further hearings to address, among other things, the issues that ComEd and other parties had raised regarding the proposal to procure long-term renewable resources.

6. The attached document supplements and modifies the IPA's prior proposal to procure long-term renewables in a way that is intended to address the concerns identified by Commission Staff, ComEd, Ameren and the Attorney General. In general, the attached document would do the following:

> a.. Makes clear that prices for the long-term power purchase agreements ("PPAs") will be set through the IPA's competitive RFP process, where the contract terms will be standardized and winning bids will be selected on the basis of price alone.
>
> b. The procurement process for Long-Term PPAs, on a stand-alone basis, will be designed and conducted in accordance with Section 16-111.5 of the Public Utilities Act and Section 1-75 of the Illinois Power Agency Act and the preferences set forth in Section 1-75(c) of the Illinois Power Agency Act shall be applied to the selection process (*e.g.*, "[t]o the extent it is available, at least 75% of the renewable energy resources . . . shall come from wind generation;" it shall be "cost-effective" as defined in that Section; the locational preferences shall be applied as set forth in that Section). 20 ILCS 3855/1-75(c).
>
> c. The REC portion of the procurement will count toward the RPS requirements and bill-impact cap set forth in Section 1-75(c) of the Illinois Power Agency Act. *Id.*

d. The PPAs will be standardized to allow for direct comparison of the bids on the basis of price alone. Renewable suppliers will have an opportunity to offer an annual target fixed quantity of energy and RECs. While some flexibility is included in the timing of certain delivery requirements, recognizing year-to-year and intra-annual variability of renewable resources, the PPAs will: (1) provide for reasonable minimum deliveries of energy and RECs, as a percentage of the target annual fixed quantity, on both a rolling 2-year basis and over the contract term; (2) provide for reasonable collateral to cover damages to the extent such minimums are not met; and (3) make clear that over the life of the contracts, the utilities will be obligated to purchase no more than the amount of energy and RECs equal to the annual quantity times 20 (years) at the contract price.

e. The terms of the PPAs will allow for the delivery of energy through a fixed for floating financial swap. The fixed price for the swap will be the full bundled contract price for the renewable PPA. The floating price will be the Locational Marginal Price ("LMP") at the utility's load zone for each hour in the day-ahead market of the applicable Regional Transmission Organization.

f. All resources that qualify as renewable energy resources under Section 1-10 of the Illinois Power Agency Act are eligible to submit offers in this procurement event.

g. In accordance with the authorization granted to ComEd and Ameren under 220 ILCS 5/16-111.5(1), the utilities will recover the costs of purchasing the quantity of annual energy and RECs specified in the Long-Term PPAs.

h. The sellers of renewable energy will be required to commit a minimum quantity of energy and RECs to the utilities, while having some flexibility in managing their deliveries in order to limit the risk premium.

7. The details of the proposed supplement to the long term renewable proposal are set forth in the attached exhibit, which is intended to replace the IPA's proposed terms for the acquisition of long-term renewables in the September 30, 2009 Plan, and as described in greater detail in the IPA's response to objections. For convenience and for clarity, the IPA recommends that the Commission adopt the attached exhibit as "Appendix K" to the Plan adopted by the Commission.

8. If the Commission approves Appendix K to the Plan, certain sections of the Plan will need to be revised to be consistent with Appendix K. The IPA will make

those necessary revisions in a compliance filing with the Commission after the Commission has entered a final order in this matter.

WHEREFORE, the IPA respectfully requests that the Commission grant the IPA leave to file these comments, and that the Commission accept as a supplement to the Plan the attached Appendix K.

Dated: November 9, 2009

Respectfully submitted,

Illinois Power Agency

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One of its Attorneys

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APPENDIX K

Long-Term Renewable Resources

In support of the goals outlined in the Illinois Power Agency Act, and in response to comments filed by various interveners in this proceeding[1], the Illinois Power Agency ("IPA") intends to solicit bids for long-term power purchase agreements ("Long-Term PPAs") to procure renewable energy. As discussed in the IPA Procurement Plan ("Plan"), the purpose of this solicitation is to protect Commonwealth Edison Company ("ComEd") and the Ameren Illinois Utility ("Ameren") customers from price risk associated with federal carbon controls.[2] Having considered all of the parties' comments[3], the IPA concludes that the Plan contains sufficient information to enable this process and provides the following additional information in the form of an appendix ("Appendix K") to the Plan.

This Appendix K sets forth the framework under which the IPA plans to procure Long-Term PPAs for renewable resources, as well as providing further detail, requested by the parties, regarding the contract terms and conditions for these PPAs.

SUMMARY

The Long-Term PPAs will represent a small portion of the overall portfolio, currently estimated at approximately 3.5%. The Long-Term PPAs will provide price certainty for acquiring long-term renewable energy and Renewable Energy Credits ("RECs"), which will assist the IPA in partially meeting the Illinois Renewable Portfolio Standard ("RPS") requirements for ComEd and Ameren.

LEGAL AUTHORITY

The Illinois Power Agency has broad authority to meet the electricity procurement needs of the State through a variety of means in order to ensure the maximum benefit to the citizens of Illinois. The IPA has elected for this year's Plan to solicit bids for Long-Term PPAs to procure renewable energy under and in compliance with the terms of the RPS established by Section 1-75(c) of the IPA Act. The IPA, however, notes that Long-Term PPAs for renewable energy are also permissible under Section 16-111.5 of the Public Utilities Act, if such procurements comply with the terms and conditions specified therein.

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[1] *See generally* comments of the People of the State of Illinois (pp. 5-8), the Environmental Law and Policy Center and the Illinois Wind Energy Association.

[2] On June 26, 2009, the U.S. House of Representatives passed HR 2454, the Clean Energy and Security Act of 2009, which would limit the emission of greenhouse gases from stationary sources. The U.S. Senate is currently considering the Clean Energy Jobs & American Power Act (S. 1733), which contains similar provisions.

[3] Objections to Long-Term PPAs were filed by Ameren pp. 1-7, Commonwealth Edison Company pp. 6-10, Illinois Commerce Commission Staff pp. 10-18.

Long-Term Renewable Resources

Procurement Plan

The IPA will solicit bids for twenty-year PPAs to purchase up to two million MWhs of renewable energy and the associated RECs each year. This will result in a total of 40 million MWhs of renewable energy purchased through the Long-Term PPAs over their twenty-year lives. This amount represents less than 4% of the IPA total expected energy requirements in the 2012 planning period. Having considered the need to hedge carbon risk, the opportunity to capture consumer benefits by procuring Long-Term PPAs at a time when unprecedented federal and State incentives are available to renewable energy producers, and the potential uncertainties associated with variable generation and interconnection costs, the IPA finds that two million MWh is the appropriate near-term target for this planning cycle. The two million MWhs will be split between the Ameren and ComEd service territories:

- Ameren: 600,000 MWhs each year for the life of the PPA.

- ComEd: 1,400,000 MWhs each year for the life of the PPA.

Prequalification Process

The Procurement Administrator, in consultation with the IPA, the ICC Staff, the Procurement Monitor, and the utilities will perform a pre-qualification process with eligible bidders, open to both existing renewable energy projects not under long-term power purchase agreements and renewable energy projects under development that have completed appropriate development and interconnection milestones. The IPA will keep all responses and conclusions confidential to promote competition.

Procurement Process

Prices will be set through the IPA's competitive RFP process, where the contract terms will be standardized and winning bids will be selected on the basis of price alone. The procurement process for Long-Term PPAs, on a stand-alone basis, will be designed and conducted in accordance with Section 16-111.5 of the Public Utilities Act and Section 1-75 of the IPA Act and the preferences set forth in Section 1-75(c) of the IPA Act shall be applied to the selection process (*e.g.,* "[t]o the extent it is available, at least 75% of the renewable energy resources . . . shall come from wind generation;" it shall be "cost-effective" as defined in that Section; the locational preferences shall be applied as set forth in that Section).

- **Benchmarks**. The Procurement Administrator, in consultation with the IPA, the Procurement Monitor, and the ICC Staff shall develop confidential benchmarks to protect consumers that will be approved by the ICC for the resources procured under this solicitation. The benchmarks will be used to evaluate bids and to reject bids that exceed the benchmarks.

- **Application to the RPS**. 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. For purposes of determining the maximum expenditure allowed under the RPS bill-impact cap, the forward price curve values will be fixed over the life of the contracts and cannot be subsequently changed or updated, except as follows: if, in any year, the expected annual contract spend is lower than the total Contract Quantities times the forward price curve value for that year, the forward price curve will be updated by the Procurement Administrator, in consultation with the IPA, ICC Staff, and the Procurement Monitor using then currently available price forecast data. If the expected annual contract spend is still lower than the total Contract Quantities times the updated forward price curve value for that year, the REC portion of the bundled bids will essentially become a credit, and the Commission will determine at that time, how to account for that credit in the determination of the bill-impact cap.

Because the quantities of RECs purchased under Long-Term PPAs will be insufficient to meet the statutory renewable targets, the IPA, subject to ICC approval, will determine how to address the remainder consistent with the statute. The way in which the IPA proposes to address such targets for the current procurement cycle are addressed in the main body of this Plan. Following the successful conclusion of a long-term renewable procurement event, the IPA will submit a confidential report to the Commission and the affected utility which contains the REC spend in each year of the resulting contracts that will be counted toward the renewable resources price cap.

PPA STRUCTURE

Generally, the PPAs will be standardized to allow for direct comparison of the bids on the basis of price alone. Renewable suppliers will have an opportunity to offer an annual target fixed quantity of energy and RECs. While some flexibility is included in the timing of certain delivery requirements, recognizing year-to-year and intra-annual variability of renewable resources, the PPAs will: (1) provide for reasonable minimum deliveries of energy and RECs, as a percentage of the target annual fixed quantity, on both a rolling 2-year basis and over the contract term; (2) provide for reasonable collateral to cover damages to the extent such minimums are not met; and (3) make clear that over the life of the contracts, the utilities will be obligated to purchase no more than the amount of energy and RECs equal to the annual quantity times 20 (years) at the contract price. The Procurement Administrator, in consultation with the IPA, the ICC Staff, and Procurement Monitor may also make appropriate price adjustments, for bid evaluation purposes, to allow for direct comparison of offers from renewable resources that have significantly different expected production profiles.

Long-Term Renewable Resources

Specific Terms and Conditions:

- **Term of PPAs.** In order to obtain a competitive, transparent price for the energy generated from renewable sources, the IPA will request long-term power purchase agreement contracts on a per MWh basis, for a term of 20 years.

- **Fixed Price Escalation.** The RFP criteria will require all offers to be in the form of a base price with a fixed escalation rate of 2% per year, provided that short-falls and carry-overs (as discussed in the Performance Guarantee section below) will be priced as of the year delivery was/is due.

- **Product Definition.** All resources that qualify as renewable energy resources under Section 1-10 of the IPA Act are eligible to submit offers in this procurement event. Sellers will specify an annual target Contract Quantity for energy plus the associated RECs that are expected to be provided on average in each delivery year (June through the following May). Seller will identify the specific generating unit or units that will be the source of the renewable energy and RECs. Capacity is not part of the product being purchased and will be discussed later. The seller's price must include and take into account any relevant transmission interconnection costs as well as the scheduled lead times to accomplish any required transmission interconnection work.

- **Financial Settlements for Energy.** The delivery of energy will be accomplished through a fixed for floating financial swap. The fixed price for the swap will be the full bundled contract price for the renewable PPA. The floating price will be the Locational Marginal Price ("LMP") at the utility's load zone for each hour in the day-ahead market of the applicable Regional Transmission Organization. The quantity of energy swapped under these agreements will be directly tied and equal to the bid percentage multiplied by the actual energy produced by the sellers specified unit or units. Seller will provide hourly-integrated generation meter data (from a revenue quality meter that satisfies RTO requirements) on a day after basis to the utilities and the IPA to enable them to perform the necessary calculations. For all energy produced by the applicable percentage of the seller's specified unit(s), the utilities will calculate the difference between the hourly LMP in the day ahead market for their zone, and the Contract Price. The price differences will be multiplied by the applicable percentage of the volume of energy produced by the specified unit(s) in each hour. For every hour that the unit(s) produced energy, if the LMP in the day ahead market at the utility's zone is less than the Contract Price, the utility will pay seller the difference in these costs multiplied by the quantity of energy produced by the unit(s) multiplied by the bid percentage related to the output from the relevant generating unit. For every hour that the unit(s) produced energy, if the LMP in the day ahead market at their zone is higher than the Contract Price, the seller will pay the utility the difference in these costs multiplied by the quantity of energy produced by the unit(s) multiplied by the bid percentage related to the output from the relevant generating unit. The net of the positive and negative payments will be settled on a monthly basis.

  Use of this swap mechanism for the delivery of energy will not affect sellers' obligation to deliver all RECs associated with all of the energy swapped.

Long-Term Renewable Resources

- **Contract Payment**. Utilities have ICC-approved pass-through tariffs to recover all reasonable costs incurred to comply with ICC-approved procurement plans, and all such costs are statutorily deemed to be prudently incurred. 220 ILCS 5/16-111.5(l). In accordance with that authorization, utilities will recover the costs of purchasing, under the terms of the Long-Term PPAs, the quantity of annual energy and RECs specified in the Long-Term PPAs, as it may vary year-to-year subject to a total cap on the contract quantity over the duration of the Long-Term PPAs. Utilities shall not be liable under the Long-Term PPAs (or any related financial swap agreements) for any costs that cannot be recovered from customers through those pass-through tariffs.

- **Performance Guarantee.** Seller will commit and guarantee a minimum quantity of energy and RECs to be delivered, ("Contract Quantity"). The same Contract Quantity will apply to both the energy and the RECs. In each delivery year (June 1 through May 31), all energy produced by the unit or units specified in the Contract, multiplied by the applicable percentage, will be used first to satisfy the annual Contract Quantity commitment along with any carry-over quantity for a future year and/or short-fall quantity for a prior year. After the annual contract commitment is fully met, the seller may retain the full benefit and value of all energy and RECs produced by the unit(s) until the beginning of the next delivery period.

    - Seller Option to Carry-over – Energy and RECs. At the seller's option, seller may deliver and be paid for up to 10% of the Contract Quantity above and beyond the annual commitment, which will be applied by the utilities to meet the Contract Quantity for the upcoming delivery year. In no event will the utility accept more than 120% of the Contract Quantity in any delivery year. The 120% would consist of 10% shortfall from the previous delivery year, 100% of the Contract Quantity in the current delivery year, and 10% carryover into the next delivery year.

    - Short-fall – RECs. In the event that at the conclusion of any delivery year the supplier has delivered, through the up to 10% carryover from the previous year and actual deliveries from the current year, less than 90% of the Contract Quantity, the seller will have 90 days to deliver replacement RECs, without the associated energy, to the utility so that sellers' total deliveries are not less than 90% for the delivery year. No payment will be made by the utilities for these replacement RECs. Replacement RECs must be of the same type (wind, solar, landfill, etc.) and locational preference (Illinois and adjacent State, non-adjacent State) as the RECs provided under the contract. In the event that the seller delivers at least 90%, but less than 100% of the Contract Quantities for any year, the seller may cure that deficiency in the following delivery year by producing and delivering excess RECs plus energy in that year equal to the previous years shortfall. In no event will a seller be allowed to carry a shortfall of RECs greater than 10% of the annual Contract Quantity for more than 90 days into the next delivery year.

- Short-fall – Energy. Similarly, energy shortfalls of no more than 10% may be carried forward and satisfied in the next delivery year. In the event that the seller fails to produce at least 90% of the Contract Quantity, the utility will compare the Contract Price to the average LMP Price at the utility load zone for the previous delivery year. If the average LMP Price is lower than the contract price, the seller will not be required to make any payment. If the average LMP Price is higher than the contract price, the seller will pay the utility the difference between the average LMP price and the contract price, times a quantity that would bring the shortfall to within 10% of the Contract Quantity.

- **Location of Generation.** The IPA procurement will solicit bids for Long-Term PPAs for renewable energy from all sources – whether in Illinois or outside consistent with Section 1-75(c)(3).

- **Delivery Point.** The delivery point for financially settling the contract will be the utility load zone. REC deliveries under this contract will be accounted for through the PJM GATS system or MISO M-RETS system.

- **Supplier credit requirements.**

  For PPAs:

  There will be separate credit requirements for energy and for RECs. For energy, this will be a non-margining contract as long as the Contract Value (Contract Quantity times Contract Price) for a three-year forward period is higher than the three-year forward Around the Clock (ATC) energy price at the utility load zone multiplied by the applicable Contract Quantity and then multiplied by a factor that reflects the average energy value of the specific resource type compared to the average ATC value. The utilities will perform daily mark to market calculations to enable this calculation. If however, the three-year forward ATC energy price multiplied by the applicable Contract Quantity and then multiplied by a factor reflecting the average energy value of the resource is greater than the three-year forward Contract Value, the supplier will post cash or a letter of credit (net of any unsecured credit allowance) with the utility equal to the difference in these two values.

  For RECs:

  The seller will post $5 per REC in the form of cash or a letter of credit to guarantee delivery of the RECs over the three-year forward period (Contract Quantity times three). If the seller fails to deliver the required annual Contract Quantity of RECs and fails to cure that shortfall in the manner described above, the utilities may seize the REC collateral and direct the IPA to use the proceeds to procure as many replacement RECs as possible with the funds. In addition, the utility will have the right to terminate the contract if the seller fails to deliver all of the RECs in a delivery year (up to the Contract Quantity) associated with the specific unit(s) identified in the contract.

Long-Term Renewable Resources

- **Delivery Commencement.** Delivery under the Long-Term PPAs will begin on June 1, 2012.

- **New vs. Existing Generation.** The IPA procurement will solicit bids for Long-Term PPAs for renewable energy from new or existing projects.

- **Bundled.** The IPA procurement process will be on a bundled basis, for both the energy generated from the project as well as the RECs generated from the project.

- **Capacity Value to the ISO.** The capacity value of the renewable asset to PJM or MISO shall remain with the owner of the asset. Furthermore, any energy and RECs produced in excess of the PPA Contract Quantity remains an asset of the owner, available for sale to other buyers.

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NOTICE OF FILING

Please take notice that on November 9, 2009, we caused to be filed via electronic mail with the Illinois Commerce Commission, the **Illinois Power Agency's Motion for Leave to File Supplemental Recommendations for the Procurement Plan and Appendix K.** A copy of the foregoing documents are hereby served upon you.

Henry T. Kelly, attorney for the
Illinois Power Agency

CERTIFICATE OF SERVICE

I, Henry T. Kelly, on oath state that I served this **Notice of Filing** and a copy of the **Illinois Power Agency's Motion for Leave to File Supplemental Recommendations for the Procurement Plan and Appendix K.** on the attached service list via electronic mail on November 9, 2009.

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