COMMENTS ON THE 2011 PROCUREMENT PROCESS PURSUANT TO SECTION 16-111.5(o) OF THE PUBLIC UTILITIES ACT

PRESENTED TO

THE ILLINOIS COMMERCE COMMISSION

by

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June 22, 2011

I. INTRODUCTION

Boston Pacific Company, Inc. ("Boston Pacific") appreciates the opportunity to submit these comments in response to the Illinois Commerce Commission's (the "Commission's") request for comments concerning the Spring 2011 Electric Procurement Events.[1]

Boston Pacific served as the procurement monitor for the six requests for proposals (RFPs) issued this year by ComEd and Ameren.[2] As required by the Illinois Public Act[3] (hereafter the "Act"), after each Bid Day we provided confidential reports to the Commission that presented the procurement results and assessed bidder behavior and compliance with the procurement processes and rules. We recommended that the Commission accept the RFP results of the six RFPs.

The bases for our recommendations were as follows. First, the RFPs were successful in acquiring the vast majority of the targeted quantities. Second, in the context of the Act's requirement to assess bidder behavior, we found no evidence of collusive or otherwise anti-competitive behavior. Third, in the context of the Act's requirement to assess whether the RFPs were run in compliance with the rules, we concluded that these RFPs were run by the procurement administrators in compliance with all Commission-approved rules. We structure our feedback and recommendations around these three areas. We also comment on RFP design and provide a few suggested recommendations in this area.

II. SUMMARY OF RFP RESULTS

The total value of contracts for the six RFPs was about $1.3 billion. Nearly all (99.8%) of the contract value was accounted for by Ameren and ComEd's RFPs for standard wholesale energy products (the Ameren and ComEd energy RFPs). Both of these RFPs acquired energy products to meet all or part of each utility's energy need for the three service years that cover June 2011 through May 2014. The weighted average prices achieved through ComEd's RFP were $44.97 for peak and $28.80 for off-peak products over the three-year period. The prices for the first service year are 5% higher for peak hours and 10.5% higher for off-peak hours than the winning prices for the comparable time period last year.[4] The weighted average prices for

[1] *Public Notice of Informal Hearing (Request for Comments) Concerning the Spring 2011 Electric Procurement Events Which Were Held On Behalf of Commonwealth Edison Company and Ameren Illinois Company*, Issued 6/1/2011.
[2] These were: 1) ComEd's RFP for energy, 2) Ameren's RFP for energy, 3) Ameren's Phase I RFP for capacity, 4) Ameren's Phase II RFP for capacity, 5) Ameren's RFP for RECs, and 6) ComEd's RFP for RECs.
[3] Illinois Public Act 95-0481
[4] We only compare the first service year because a comparison of the second service year is not meaningful given that the products and quantities solicited last year were significantly different than those solicited this year. A

Ameren's energy products for the same time period were $41.33 for peak and $26.47 for off-peak. These prices are 2% and 4% above the weighted average winning price in last year's RFP, respectively.

Ameren's capacity RFP solicited products to meet Ameren's monthly MISO resource adequacy requirements for the period June 2011 through May 2012. For reasons that will be explained below, Ameren's capacity procurement was conducted through two separate RFPs. The weighted average winning price for the entire service year was $18.40/MW-month. This price reflects a 72% decrease from last year for the comparable time period[5] and is indicative of an oversupply of capacity in MISO. The two highest priced months were July and August with prices of $77.01/MW-month and $59.31/MW-month, respectively. The prices for these months are 75% and 74% lower than those secured last year, respectively.

The Renewable Energy Credits (REC) RFPs achieved their fundamental objective which was to comply with the RPS established by Section 1-75(c) of the Act. In order to comply with the Act it was determined that (a) 952,145 RECs would be procured for Ameren at a total cost at or below a budget limit of $30,180,309 and (b) 2,177,054 RECs would be procured for ComEd at a total cost at or below a budget limit of $75,862,595. The most significant result of these RFPs is that the REC targets were met at prices that were substantially lower than last year. The average winning REC price was $0.92 for Ameren and $0.95 for ComEd. All winning RECs were from Illinois and Adjoining States. As prescribed by the priorities in the Act, 75% of the selected RECs were from wind resources. The total acquisition cost of winning RECs was about $2.9 million for both utilities. This is significantly below the budgets allowed by the Act for this year's procurements, which would have allowed a combined total spending of $106 million.

The low REC prices observed this year indicate that there is an oversupply of RECs from existing facilities in the market. This likely was influenced by the change in priorities made this year in which RECs from Adjoining States were given the same priority as RECs from Illinois. As expected, this significantly increased the pool of RECs that could now qualify for the top priority. For example, according to the American Wind Energy Association, as of the end of the first quarter of 2011, Illinois had 2,286 MW of wind capacity while the adjoining states had 6,106 MW. In addition, these lower REC prices are consistent with a general trend of decreasing REC prices over the past years in the U.S.

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comparison of the third service year is not possible given that last year's RFP only procured energy for two service years.

[5] While last year Ameren procured capacity for three service years, this year capacity was only procured for one service year. In order to be able to provide reasonable comparisons to last year, we compare this year's results to the first service year in last year's capacity RFP.

III. COMMENTS ON BIDDER BEHAVIOR

In the context of the Act's requirement to assess bidder behavior, we found no evidence of collusive or otherwise anti-competitive behavior. There were a good number of winners for each RFP, which is evidence that these RFPs were competitive. There were 9 winning bidders for ComEd's energy RFP, 10 for Ameren's energy RFP, 9 for Ameren's capacity RFPs and 12 for the REC RFPs.

A review of the publicly announced winners for these RFPs shows that many bidders participated in multiple RFPs. Eleven out of the 28 winners were listed as winners in 2 or more of the four public announcements that were made with the results of the RFPs. Furthermore, 27 of this year's 28 winners had also won some share in at least one of the RFPs that have been held since 2008. This high number of return bidders is a sign that the process is viewed by bidders as being fair and transparent.

Recommendation 1: This year the RFPs were held in an unnecessarily compressed schedule that exposed ratepayers to significant risk and shortened the timeframe given to bidders to prepare to bid. The IPA should start next year's procurements much earlier in the year.

This year the procurement administrators were not in place until April 5, 2011. This left a very short timeframe, less than two months, to conduct all RFPs and to execute contracts with the winning suppliers in order to have delivery of the products begin by June 1, 2011. Furthermore, the delay exposed ratepayers to the risk of incurring significant MISO-related penalties in the event that Ameren's capacity RFP could not be held in time to be able to satisfy its obligations with MISO. Ameren faced a MISO-imposed hard deadline of May 1st by which it was obligated to present Planning Resource Credits (PRCs) to meet its resource adequacy requirements for the month of June 2011. Failure to do so would have resulted in significant penalties being imposed – $80,000 per undelivered PRC.[6] In a worst case scenario in which none of the 1,200 PRCs for June were presented by Ameren to MISO by May 1, the penalty would have been $96 million dollars. Having the procurement administrator in place only on April 5, left less than one month to design, issue and conduct Ameren's capacity RFP while still meeting the May 1st deadline. Given the lack of time and significant risks at stake, the IPA opted

[6] At the time that the Capacity RFP was held there was an expectation that this penalty could increase to $95,000/MW-month based on MISO's recalculation of the Cost of New Entry (CONE). This would increase the penalty to $114 million dollars. See Midwest ISO Tariff Module E – Resource Adequacy, Effective 7/28/10, Section 69.10 Calculation of CONE Version: 1.0.0 Effective: 6/01/2011.

for issuing two separate capacity RFPs. The first RFP implemented a "simplified" process that would allow Ameren to procure the June 2011 PRCs by the May 1st deadline. The second RFP procured capacity for the remaining 11 months of the service year.

We note that as an alternative to conducting this "simplified" capacity RFP, Ameren could have purchased the 1,200 PRCs to meet its June requirement directly through MISO's Voluntary Capacity Auction (VCA). This alternative likely would have cost less than the cost of running an additional RFP, but the IPA decided to continue with the implementation of the two capacity RFPs. In order to gain some time, prior to the selection of the procurement administrators, draft RFPs and Contracts were reviewed by Staff and the procurement monitor and then distributed to potential bidders.

The compressed schedule for all the procurements also meant that bidders had less time to review the RFPs and Standard Contracts, provide comments to these contracts, obtain necessary internal approvals to bid, and to obtain letters of credit and other necessary requirements to bid into these RFPs. It also provided the procurement administrators, Staff, IPA and procurement monitors with less time to fully vet and incorporate design enhancements to the RFPs.

We recommend that next year the IPA have the procurement administrators in place in time for the procurement process to start in the January or February timeframe. We see no reason why this cannot be done.

IV. COMMENTS ON COMPLIANCE WITH THE RULES

In the context of the Act's requirement to assess whether the RFPs were run in compliance with the rules, Boston Pacific concludes that these RFPs were run by the procurement administrators in compliance with all Commission-approved rules including: communication among the procurement administrators, bidders and the utilities; product types solicited; the use of standard contracts; the calculation and use of market-based benchmarks; and procedural requirements such as providing bidders an opportunity to comment on contracts and credit-related documents.

The RFPs also complied with those specific changes that were approved by the Commission in this year's Final Order:

First, Ameren procured contracts for physical delivery of energy, which marks a change over the financial swap energy products that were procured over the past three years. The change was made due to uncertainty surrounding the potential impact of pending regulation by the U.S. Commodity Futures Trading Commission (CFTC) of over-the-counter derivatives. To the extent these changes are applicable to Ameren's financial swap energy contracts, they had the potential to increase costs for Ameren, its suppliers and customers by enforcing new margin requirements and reporting requirements. As a result of this change, Ameren adopted an industry template for its standard contract which was the Edison Electric Institute's (EEI's) Master Power Purchase and Sale Agreement. This is the same industry standard contract that ComEd uses for its energy procurements.

Second, in accordance with the Order, the quantities for peak July and August that were procured by ComEd and Ameren did not include 10% oversubscription amounts. In the past, the quantities to be procured for the peak months of July and August have included a 10% oversubscription, which was intended to serve as a hedge to potential spikes in prices during these months.

Third, for the first time, Ameren bidders for the energy RFP were given an option to bid annual products and also to bid combinations of months for the full three service years (last year they were only allowed to bid combinations for the first year and a half). These changes resulted in further standardization of the energy product types across the ComEd and Ameren energy RFPs. Bidders appear to have liked this option based on a review of the publicly announced winning products.

Fourth, for Ameren's Capacity RFP, the product types and quantities were in compliance with a change that was approved by the Commission's order to only procure capacity for one service year. This marks a difference from last year when capacity was procured for three service years. The reason for only procuring one service year is that, at the time in which the Order was approved, significant changes to the MISO resource adequacy construct were being discussed at MISO. These changes could potentially impact the capacity products that would be required to comply with capacity requirements beyond the June 2011 through May 2012 service year. Until the new MISO requirements were known[7], it was deemed best just to procure for a single service year. As a result of only procuring for a single year, suppliers were not required to post performance assurance this year because they were obligated to deliver all winning products by May 25, 2011. Last year, performance assurance served the purpose of ensuring that the capacity won for the second and third service years would be delivered. The standard contracts were changed to reflect the fact that no performance assurance was required.

Fifth, for the REC RFPs, the product types and REC priorities were adjusted this year to be in compliance with a significant change specified by the Act that after June 1, 2011 the same

[7] MISO has indicated that it plans to file a formal proposal with FERC in June 2011 after a thorough stakeholder process.

priority should be given to RECs that are generated in states that adjoin Illinois as the priority given to those generated in Illinois.

V. COMMENTS ON RFP DESIGN

For the most part, the Standard Contracts and RFPs for this year's procurements were based on versions that were used in past year's procurements. The procurement administrators, Staff, utilities, and procurement monitor have made efforts to harmonize them over the years across the RFPs. The most significant areas that are important to bidders have also been addressed through the process of reviewing comments that are submitted by bidders. This year further steps were taken to harmonize credit requirements for the REC RFPs. As specified in the Order, the REC contracts were harmonized to include collateral requirements that equal 10% of the remaining contract value, and to provide unsecured credit limits for creditworthy REC suppliers.

The following are further steps that can be taken to continue to harmonize the RFPs and contracts.

Recommendation 2: Credit requirements can be further harmonized by having a standard pre-bid letter of credit format that could be used across all RFPs

As indicated above, many winners this year won in multiple RFPs. Bidders who participate in multiple RFPs can benefit from having a standard pre-bid letter of credit format that can be used across all RFPs. This will ease their efforts with the banks to obtain the letters of credit that are required for each RFP. The pre-bid letters of credit are required for each RFP to ensure that those bidders who win will follow through with executing the contracts. We note that to date efforts have been made to harmonize the pre-bid letters of credit that are used for the RFPs held by each utility. However, there is room to harmonize them across ComEd and Ameren. That is, to the extent possible, the pre-bid letters of credit should have the same format across all RFPs, except for company specific information. This should include having a common set of optional changes (acceptable modifications) that can be applied across all RFPs.

Recommendation 3: Consider providing an option for bidders to submit a single pre-bid letter of credit that can be used for several RFPs

Consideration should be given to providing bidders with an option to submit a single pre-bid letter of credit that can be used across multiple RFPs being held by each utility. For example, this year bid days for ComEd's energy and REC RFPs were held within 3 days of each other. Bidders who participated in both of these RFPs were required to process two separate pre-bid letters of credit within a matter of days. Given the option, some of these bidders may have preferred to process a single letter of credit that could be used for both. This option becomes less attractive to bidders to the extent that the timing of the RFPs is spaced out further. This is because bidders would not want pre-bid letters of credit that are left open for longer periods of time.

Recommendation 4: Contracts can be further harmonized by standardizing forms of guarantee and post-bid letters of credit across utilities

Winners are typically required to post credit assurance to cover each utility's exposure under the contracts. Suppliers may rely on the credit of a guarantor and/or post a letter of credit to cover each utility's exposure. A standard form for the guaranty and a standard form for the post-bid letter of credit are incorporated into the contracts, which have been harmonized to a significant extent for the RFPs that are held for each utility. Also, no significant differences remain between ComEd's forms and Ameren's forms. However, an effort should be made to harmonize the few remaining differences that currently exist so that common forms can be used across all RFPs. This includes having a common set of allowable variations.