

**REPLY COMMENTS ON THE 2012 PROCUREMENT PROCESS
PURSUANT TO SECTION 16-111.5(o) OF THE PUBLIC UTILITIES ACT**

PRESENTED TO

THE ILLINOIS COMMERCE COMMISSION

by

**BOSTON PACIFIC COMPANY, INC.
AS THE COMMISSION'S PROCUREMENT MONITOR**

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I. INTRODUCTION

Boston Pacific Company Inc. appreciates the opportunity to submit these reply comments in response to the Illinois Commerce Commission's (the "Commission's") request for comments concerning the 2012 Electric Procurement Events which were held on behalf of Commonwealth Edison Company (ComEd) and Ameren Illinois Company (Ameren).¹ We focus our reply comments on a select subset of the initial comments.

II. REPLY TO COMMENTS FROM THE OFFICE OF THE ILLINOIS ATTORNEY GENERAL

The Office of the Illinois Attorney General (OIAG) questions the competitiveness of Ameren's Energy RFP and of the REC RFPs because there were few winners this year. The OIAG also questions whether the price benchmarks for Ameren's Energy RFP were appropriately set and properly protected from disclosure prior to bid day. Finally, the OIAG questions the efficacy of Ameren's Capacity RFP because it failed to procure the targeted need for July 2012. We respond to these specific concerns below.

A. Response to OIAG's questions about the competitiveness of Ameren's Energy RFP and the REC RFPs

The OIAG questions the competitiveness of Ameren's Energy RFP because there were just two winners. The OIAG also questions the competitiveness of the REC RFPs because they had fewer winners than in the past.

The OIAG is using far too narrow of a lens to judge the competitiveness of these RFPs by only looking at the number of winners. For example, an RFP can result in just a few winners simply if a small subset of bidders bid aggressively lower prices than the rest of bidders. Such a result could be a welcome outcome for Illinois ratepayers, who would benefit from the lower prices.

We use a broader range of metrics to assess the competitiveness of these RFPs. First, we look at the number of bidders. A good number of bidders is a positive indicator because it makes it difficult to hold together any collusive scheme to raise prices. Second, we look at the ratio of bids received to the quantity of the product solicited. A high ratio indicates that there were many bids competing for each unit of product solicited. Third, we analyze historical bidder behavior by comparing metrics for similar RFPs over time. In some cases, this helps us explain why

¹ *Public Notice of Informal Hearing (Request for Comments) Concerning the 2012 Electric Procurement Events Which Were Held On Behalf of Commonwealth Edison Company and Ameren Illinois Company*, Issued 5/17/2012.

bidders bid in a certain way. Fourth, we use a market-based price benchmark. Receiving many bids with prices lower than the benchmark is a sign that bidders were competing not just against each other but against the broader marketplace. Fifth, we carefully examine any unexpected result for evidence of anti-competitive or improper behavior. In this analysis we pay careful attention to the actions of utility affiliates.

We also look beyond the results of a single RFP and analyze overall market concentrations for the supply of a given service year. Because the supply of a service year is met through purchases that are made from several RFPs, we expect to see many providers supplying the need for that service year. For example, to supply the need of its eligible retail customers for the service period from June 2012 through May 2013, Ameren has purchased energy from (a) the 2010, 2011 and 2012 energy RFPs, (b) the 2010 long-term renewable energy RFP, and (c) from mandated fixed swap contracts.

Another factor that should be taken into consideration when looking at the number of winners for Ameren's Energy RFP is that there was significantly less energy being solicited this year than in past RFPs. While last year on-peak energy products were solicited for 36 delivery months and off-peak energy products were solicited for 35 months, this year on-peak and off-peak energy products were solicited for only 5 and 4 months, respectively. Similarly, last year 13,070,000 MWHs were sought while this year only 612,000 MWHs were sought (less than 5% of last year's quantity). Simply put, there was much less room in the winners' circle for multiple winners this year.

Though we cannot disclose the details of our competitive assessment of any particular RFP, we are confident that all RFPs that we have monitored since 2006 have been competitive.

B. Response to the OIAG's questions about the level of the benchmark and whether it was improperly disclosed

The OIAG suggests that the benchmark was inappropriately set because there were a limited number of winners in Ameren's Energy RFP. However, the OIAG does not provide any substantiation for this claim.

We are confident that the price benchmark for this RFP was appropriately set. First, there is a rigorous process in place to develop and vet each price benchmark. Benchmark methodologies are designed by the procurement administrators, and vetted by Staff, the procurement monitor and the IPA. After being vetted they must be approved by the Commission. This vetting and approval process gives us confidence that the benchmark

methodology was appropriate. Second, we examined bid prices received as compared to the benchmark values and did not see any indication that benchmark values were inappropriate.

The OIAG also suggests that the benchmark may have been disclosed prior to bid day. This is a serious accusation for which the OIAG presents no evidence whatsoever. We believe the OIAG's accusation is baseless and that the OIAG should not be so reckless. Prior to bid day no more than five parties have access to the benchmark methodology or the actual benchmark values: the procurement administrators, the IPA, the procurement monitor, Staff, and the Commission. Great care is taken by these parties to maintain the confidentiality of the benchmark and all sensitive information.

C. Response to OIAG's concerns about the efficacy of Ameren's Capacity RFP

The OIAG raises concerns about Ameren's capacity RFP because it failed to procure all the need for July 2012 despite the fact that there is excess capacity in MISO. This is a valid question which we raised in our post-bid report to the Commission. However, the OIAG fails to consider why this result may have occurred.

In fact, there are a number of possible explanations for why the quantities solicited for July 2012 were not fully procured. First, there were significantly more PRCs solicited (and procured) for July this year than last year. For July 2012, 1,980 PRCs were solicited, out of which 1,630 PRCs were procured; this compares to 1,170 PRCs solicited and procured for July 2011 last year. Second, some bidders may have chosen to sell their capacity elsewhere after a drop in price for July capacity that went from \$312.46/MW-month in 2010 \$77.01/MW-month in 2011. Bidders may have chosen to sell their capacity to other load serving entities, perhaps ARES in light of recent significant municipal aggregation, through bilateral contracts rather than bid into this RFP. Third, some bidders may have chosen to bid some of their July capacity into a parallel RFP being held by Ameren to meet the resource adequacy requirements of customers on its Real-Time Price tariffs. Fourth, some capacity for the service year June 2012 – May 2013 may have been sold to other sources last year when the Ameren capacity RFP only procured capacity for a single year (June 2011-May 2012) rather than three years forward as had been done previously. That is, bidders who wanted to lock-in future capacity sales last year and could not do so through the Ameren Capacity RFP may have chosen to sell some of their capacity for the June 2012 – May 2013 service year elsewhere.

A second concern raised by the OIAG is that the winning prices in Ameren's capacity RFP for July 2012 were higher than the prices for July 2012 in MISO's Voluntary Capacity Auction (VCA) held at about the same time. The OIAG implies that it would have made sense for bidders to bid their supply into this RFP, rather than selling it at the VCA's lower prices. The

OIAG fails to consider that suppliers could have chosen to sell their capacity through bilateral transactions with the expectation of achieving higher prices than through Ameren's capacity RFP. Rather than comparing Ameren's July prices to the VCA, a more accurate comparison would have been to the average prices transacted through bilateral contracts as most of MISO's capacity is sold through bilateral contracts. Prices in the VCA are not an accurate reflection of capacity prices in MISO; the VCA only transacts a small fraction (less than 1%) of MISO's capacity.

Going forward, any concerns about Ameren's Capacity RFP should take into account that MISO's capacity market is undergoing significant structural changes, replacing the VCA with forward zonal capacity auctions. As we stated in our initial comments, there may be no need for Ameren to hold a separate capacity RFP once MISO implements this new capacity construct. Were Ameren instead to procure capacity through this new MISO market, it would be a similar situation to ComEd, which procures capacity through PJM markets, rather than through an RFP.

III. HOW THE PROCUREMENT MONITOR ENSURES THAT THE RFPs ARE FAIR AND COMPETITIVE

In light of the OIAG's questions, we believe it is important for bidders to know that both the procurement monitor and Staff are extensively involved in all aspects of these RFPs to ensure that they are fair and competitive. Because many bidders may not be aware of all the work that we do, we take this opportunity to provide a detailed description of our involvement in these RFPs.

First, we perform a thorough review of draft RFP documents and contracts before they are made public. We review these documents to ensure that they are in accordance with the Commission approved procurement plans and the Act with respect to the quantities and products being solicited, the RFP rules, the contract terms, and other aspects. We are often involved in lengthy discussions with the procurement administrators, Commission Staff, IPA, ComEd, and Ameren on the development of the standard contracts. Each year changes are made to the contracts with a goal of further standardizing them, and harmonizing them across utilities.

Second, we monitor the bidder pre-qualification and registration processes. This entails independently calculating bidder's credit thresholds, comparing our calculations with those of the procurement administrators, and discussing with the procurement administrators any issues that would prevent bidders from qualifying.

Third, we review and comment on all bidder comments to documents throughout the procurement process. This process, like the review of draft RFP documents, involves all key parties.

Fourth, we review and comment on confidential market-based price benchmark methodologies for each RFP.

Fifth, we work with the procurement administrators to ensure that all bid evaluation software systems and procedures are prepared for each bid day. We work extensively with the procurement administrators and Commission Staff to validate the design of bid evaluation methodologies. We then test the accuracy of these methodologies by developing complex trial bids designed to test a wide range of scenarios and then comparing our evaluation of these trial bids against an evaluation conducted by each procurement administrator. This not only helps ensure that the procurement administrators are prepared to perform the evaluations on Bid Day, but importantly allows all parties to reach, prior to bid day, a common understanding on the rules to handle complexities that could arise during bid evaluation.

Sixth, we monitor in person the receipt of bids for all RFPs either in Chicago for ComEd's RFPs or in Boston for Ameren's RFPs. We physically watch the procurement administrators receive all bids, check these bids, and confirm receipt of bids to all bidders. We help resolve any issues that come up during bid day and ensure that all bid submission rules are applied equally and fairly.

Seventh, we make certain that the correct bids are chosen as winners by performing independent bid evaluations with in-house models and checking our results against those of the procurement administrators.

Finally, we review the results of each bid day and, within two days of each bid day we deliver comprehensive confidential post-bid reports to the Commission. The reports contain our recommendation to the Commission on whether to accept the RFP results. They also contain a summary of the results, an assessment of the competitiveness of the RFP, an assessment of consistency with market conditions, and an assessment of compliance with RFP rules, Orders, and the Act.

IV. REPLY TO COMMENTS FROM NERA ABOUT CONTRACTS AND THE PRE-BID LETTER OF CREDIT

A. Rationalize Contract Comment Process

NERA wants consideration to be given to reducing the frequency of the contract comment process, if allowed under the Act. NERA suggests that for the RFPs that have already been held several times, the benefits of receiving bidder comments are outweighed by the significant cost of the process to review these comments.

We agree with NERA that, by now, most contracts have become highly standardized and already reflect changes based on input that bidders have provided since the 2008 RFPs. In fact, in our initial comments we highlighted the fact that, when given a chance to comment on the contracts, this year not many bidders chose to do so. Despite this, we highly encourage that bidders continue to be given a chance to provide comments for all RFPs. First, we interpret the Act to require that bidders be allowed to comment on the contracts for each RFP. Section 16-111.5(e)(2) of the Act implies this when it states that “The procurement administrator shall make available to the Commission all written comments it receives on the contract forms, credit terms, or instruments.” Second, the comments that bidders provide on the contracts are one of the few ways in which we have access to direct input from bidders. In the past, valuable feedback has been received and we want to continue to have this venue open through which to continue to receive input from bidders. Third, denying new participants an opportunity to comment on the contracts may be unfair and could discourage their participation in the RFPs. Finally, if recent experience continues and bidders submit few comments on the contracts, then NERA’s concern about the costs of allowing a comment period should be lessened.

We would be supportive of looking at ways in which to streamline the process by which comments are reviewed. For example, the parties could agree on a set of rules that could narrow down the comments to be reviewed: a) comments that substantially change the risk allocation between the utility and suppliers will not be considered, b) only those contract terms for which there are two or more comments submitted would be reviewed, c) comments on a contract term that are submitted by a single bidder will only be reviewed if they would substantially improve the contract, correct any errors, address any concerns about fairness, or address a risk that could potentially discourage bidders from participating in the RFP.

B. Shift responsibility for preparation of contracts to ComEd

NERA comments that in the past, they have prepared the contracts to be executed by winning bidders. NERA believes that it would be more efficient for ComEd to prepare the contracts and guarantees. We have no objections to having ComEd prepare the contracts.

C. Make the IPA the beneficiary under the pre-bid letter of credit

In order to bid into these RFPs suppliers must submit pre-bid letters of credit which are required to: (a) ensure that those bidders who win will follow through with executing the contracts and post the necessary credit requirements, (b) provide security to the utilities in the event a bidder makes a misrepresentation on its bid or application or violates any RFP rules, (c) provide security to the utilities in case the bidder discloses information relating to its proposal before the ICC has rendered its decision on the results of the procurement. Currently the beneficiary of the pre-bid letters of credit is the utility; however, NERA believes that having the IPA as the beneficiary would increase efficiency.

We believe that the utility should remain the beneficiary of the pre-bid letters of credit. This is because one of its main purposes is to prevent winners from not following through on executing their contracts with the utility. If this happens, the utility would draw upon the letter of credit and use those funds towards purchasing replacement products. Under a scenario in which the IPA is the beneficiary, the IPA would be the one drawing on the pre-bid letter of credit and then transferring the funds to the utility. This seems to be an unnecessary extra step.

One reason cited by NERA for having the IPA as the beneficiary of the pre-bid letter of credit is that this would allow the IPA to draw upon it if bidders fail to follow through on their undertakings under their proposal, including the undertaking that they promptly pay the supplier fees. The underlying concern that we see here is how to provide assurance that winners will pay the supplier fee within the desired 7 business days. Currently, winners are asked to execute a Supplier Fee Binding Agreement in which they agree to pay the fee; however, there are no automatic consequences if they fail to pay it. Adding “failure to pay supplier fee” as a reason for which to draw upon the pre-bid letter of credit is one way of ensuring that winners pay the fee in a timely manner. However, this could still be done with the utility as the beneficiary. In this case the utility could draw the necessary funds to pay the supplier fee and remit those to the IPA, assuming this is allowed by the utility’s internal protocols. Other ways should be explored that can give assurances for the prompt payment of the supplier fee. For example, penalties and/or interest could be assessed for every month that the supplier fee remains unpaid. This would encourage winners to pay the supplier fee promptly. The ultimate assurance can then be provided if the utility agrees to deduct and send to the IPA any unpaid supplier fee balance prior to paying a Seller’s invoice.