Comments of Constellation Energy Commodities Group, Inc.
Concerning Recent Procurement Events Held On Behalf of
Commonwealth Edison Company and the
Ameren Illinois Utilities (Ameren-CILCO, Ameren-CIPS, and Ameren-IP)

Section 16-111.5 of the Illinois Public Utilities Act (the "Act") includes various provisions relating to the procurement of electric power and energy for Commonwealth Edison Company ("ComEd"), as well as Central Illinois Light Company (d/b/a AmerenCILCO), Central Illinois Public Service Company (d/b/a AmerenCIPS), and Illinois Power Company (d/b/a AmerenIP) (collectively, the "Ameren Illinois Utilities"). Among those provisions are requirements for the Illinois Power Agency ("IPA") to file a procurement plan for electric power and energy acquisition for those customers that are eligible to take fixed-price electric service from ComEd and the Ameren Illinois Utilities for the supply period of June 1, 2009 – May 31, 2010 ("Procurement Plan"). Consistent with the Act, the IPA filed its Procurement Plan with the Illinois Commerce Commission (the "ICC" or "Commission"). The Procurement Plan was open to comment and debate by interested parties before the Commission. In the Commission proceedings, certain aspects of the Procurement Plan were subject to input from Commission Staff and other interested parties. At the conclusion of those proceedings, the Commission entered an Order approving the Procurement Plan with certain modifications (ICC Docket No. 08-0519).

Pursuant to that Order, ComEd and the Ameren Illinois Utilities engaged third-party procurement administrators to conduct sealed-bid requests for proposals ("RFPs") for energy, capacity (Ameren only), and Renewable Energy Certificates ("RECs"). The results of the five (5) RFPs were approved by the Commission after being supervised by a Commission-hired procurement monitor, Boston Pacific Company, Inc.

In addition to review and approval of the Procurement Plan, Section 16-111.5(o) of the Act states:

> On or before June 1 of each year, the Commission shall hold an informal hearing for the purpose of receiving comments on the prior year's procurement process and any recommendations for change.

In fulfillment of this requirement, the Commission provided public notice issued May 15, 2009, of its intent to hear all interested parties' comments relating to the above-described procurement process and its five procurement events.

Background

Constellation Energy Commodities Group, Inc. ("CCG") is a power marketer authorized by the Federal Energy Regulatory Commission to sell energy and capacity and certain ancillary services at market-based rates. CCG focuses on serving the needs of distribution utilities, co-ops and municipalities that competitively source their load requirements. CCG also sells natural gas and other commodities at wholesale, both in the United States and abroad, and holds interests in exploration and production companies. CCG does not own any physical assets for the generation, transmission, or distribution of electric power and has no retail electric customers or service territories. However, CCG bids energy, capacity and ancillary services on behalf of generation-owning affiliates into the markets administrated by PJM Interconnection, L.L.C. and the Midwest Independent Transmission System Operator, Inc.

The most recent round of procurements in Illinois, which attracted a large number of qualified bidders and ultimately winning bidders, demonstrates the benefits of the competitive procurements when part of a well-run process. For example, the results of those procurements will yield a decrease of over nine (9) percent in the retail rates for ComEd customers.[1]

Summary of Recommendations

CCG was an active participant in the Commission proceedings that resulted in the adoption of the Procurement Plan as well as all of the related activities leading up to each of the five procurement events currently under review. CCG submitted bids in four of the five procurement events, and was one of the winning bidders in three of those events. Based on its experiences in the recent procurement events, as well as its expertise over the years in other procurement events in Illinois and other jurisdictions, CCG proposes the following three (3) overarching recommendations for improvements to the future procurement processes to be overseen by the Illinois Power Agency ("IPA"):

1. Reduce regulatory uncertainty by shortening the window of time between submission of bids and notification to potentially winning suppliers;
2. To the extent possible, achieve standardization and clarity based on commonly recognized market products; and
3. Include full requirements contracts in procurement plans.

Reduce Regulatory Uncertainty

The time period between the submission of bids and the timing that potentially winning suppliers are notified should be shortened, to the extent possible. Both the IPA and the Commission are to be commended for reducing the time period between submission of bids and contract execution. The IPA Plan resulted in submission of potentially winning bids in a shorter time frame than the outside limits established under the law, and the Commission likewise expeditiously evaluated and approved the results of the procurement events during this most recent procurement cycle. However, further

[1] http://phx.corporate-ir.net/phoenix.zhtml?c=124298&p=irol-newsArticle&ID=1293889&highlight=

improvements can be made in shortening the time period for "informal" notification to potentially winning bidders.

The longer that bids must remain open, and be subject to the possibility that bids will be renegotiated or rejected during a review process that does not define the criteria for such renegotiation or rejection, the greater the likelihood that consumers will ultimately be economically harmed. While bids are held open during the review process, bidders retain the risk that market prices will change suddenly or unexpectedly. This risk is particularly important in procurement events involving Block Energy Products, given the volatility in today's market. Potential suppliers have to incorporate such risks in their bids to account for this time lag. These risks will necessarily translate into bid prices.

Decreasing the length of time between submission of the bid and notification of likely bid award decreases the risk that suppliers bear, which would likely lead to lower overall bid prices. Such a result is consistent with the legislative mandate that:

> The Commission shall approve the procurement plan if the Commission determines that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service **at the lowest total cost over time**, taking into account any benefits of price stability.[2]

Given that the Block Energy Products are standard wholesale energy products, the review of these bids should be relatively straightforward, and should not require negotiation or additional review time. Constellation appreciates the efforts by the procurement administrators to convey their recommendations to the Commission expeditiously, and the Commission's prompt action in reviewing those recommendations. However, any time that can be shaved off of the current process is of benefit to suppliers, and therefore ultimately will inure to the benefit of ratepayers.

[2] 220 ILCS 5/16-111.5(d)(3) (emphasis added).

A potential solution to the above concern can be addressed by requiring the procurement administrators to notify likely winning and losing bidders (e.g., whether or not the bidder's name is being submitted to the ICC as one of the group of qualified bidders with the lowest overall prices), subject to ICC approval, as soon as possible on the same calendar day that bids are submitted. As stated above, the review of bids for standard Block Energy Products should be relatively straightforward, and should not require additional time. At a minimum, bidders should receive notification of the Procurement Administrator's recommendation to the ICC at substantially the same time that the recommendation is delivered to the ICC. This process was followed throughout the ComEd procurement processes, but was not followed in the Ameren procurement processes, despite requests from several potential bidders this year, as was the case in past procurements. This is of particular importance for the energy procurement, in which there is the greatest price volatility.

Reduce Administrative Burden Through Standardization And Clarifications

Future procurement events can benefit from standardization and clarification in the following areas:

- Permitting bid packages/combinations for energy procurements;
- Accepting green-e certificates for REC procurements; and
- Clarifying environmental attributes for RECs.

Permit Bid Packages/Combinations in Energy Procurements

In the recent energy RFP for the Ameren Illinois Utilities, bidders were precluded from bidding packages or combinations. For example, a bidder may choose to bid on a full annual strip or a seasonal strip, such as on a quarterly basis. However, the Ameren

Illinois Utilities choose to obtain prices on a month-by-month basis only and therefore prohibited suppliers from bidding in such a fashion. The "monthly block only" option is not only in conflict with the ComEd energy RFP, in which bidders were able to offer in annual or seasonal strips, but it is contrary to products that are regularly traded in the marketplace. By deviating from those commonly recognized market products, suppliers may be unable, or less able, to hedge their associated risks. That can have one of two impacts: suppliers may choose not to participate in that particular event, or submitted bids may reflect an increase in costs necessary to satisfy that inability to adequately hedge.

Accept Green-e Certificates for REC Procurements

In the recent REC RFP for ComEd, bidders were permitted to deliver RECs only through PJM-EIS GATS or M-RETS, and were therefore precluded from utilizing RECs that carried a Green-e wholesale certification, which is commonly recognized in the national renewables market. In order to be certified as Green-e, organizations offering such products must meet the requirements for renewable resources detailed in the national Green-e Energy Standard; abide by a professional Code of Conduct that governs the marketing and business practices of the participating organizations; follow the Green-e Energy Customer Disclosure Requirements including providing the customer with a Product Content Label for the certified renewable energy option, which identifies the renewable resource type they supply (such as wind or solar) and the geographic location of the renewable energy generator, and providing customers with simple, clear Price, Terms and Conditions for the renewable energy option; and undergo an annual verification process audit to ensure that they are buying enough of the right types of renewable energy to match their certified sales to customers.[3] In short, use of a Green-e product carries sufficient rigor that it ought to be viewed (and is widely viewed) as possessing the same reliability as a GATS or M-RETS product, and thus permitted to be utilized for REC supply in future ComEd REC procurements. Increasing the number of reliable, eligible products can only serve to increase the number of offers, and thus ensure that ComEd and ultimately its customers are receiving the best possible price for RECs.

Clarify Environmental Attributes

Care should be taken up front to provide as much clarity surrounding products that are to be included in REC procurements; specifically, environmental attributes should be addressed. For example, it was unclear whether NOx was a part of the product in the Ameren REC procurement, and thus potential suppliers had to make assumptions or submit FAQs. Establishing those clear product definitions at the outset alleviates any unnecessary uncertainty.

Use Full Requirements Products To Minimize Customer Risks

The IPA should conduct future procurement events that rely upon the use of full requirements products. The IPA is given discretion to procure products individually, or in combination.[4] The IPA should take into consideration the fact that customers bear greater risk with separate block products, because the shape and quantity of the load is not known, and should adjust future procurement plans accordingly by procuring full requirements contracts.

Procuring full requirements contracts achieves several benefits. First, a full requirements procurement structure relieves the IPA from active portfolio management

[3] http://www.green-e.org/getcert_re.shtml
[4] 220 ILCS 5/16-111.5(b)(3)(iii).

responsibility, and instead places the planning responsibility into the hands of the winning full requirements suppliers, who have extensive experience in managing portfolios. In doing so, full requirements procurement demands far less regulatory involvement in evaluating the specifics of a procurement plan to assess whether the IPA is buying the "right" products, in the "right" amounts, and at the "right" times, than would an approach for Block Energy Products. Second, this approach yields the lowest fixed price at which these customers can be served, so it provides a fully competitive price while at the same time minimizing short term price volatility and insulating customers from other risks that would be borne by the full requirements suppliers. Third, it will continue to offer an efficient way to bring the benefits of wholesale competition to residential and small commercial customers that do not select alternative retail electric suppliers while protecting them from the potential monthly volatility of the wholesale markets to which customers are currently subjected.

Several examples bear out the benefits of a full requirements offering. First, an independent study was issued in January 2008 ("2008 Market Study") by the Analysis Group, a well-respected energy and economic consulting firm; it promotes the use of competitive procurements for full requirements contracts. The 2008 Market Study points out that:

> One of the advantages of competition in the procurement of such [full requirements service] is that it taps into the abilities and skills of different players to develop different and innovative strategies to meet and adapt to power supply conditions as they change in the future. This provides a diversity advantage to consumers. It passes risk from consumers and the utility that is serving as their supply conduit over to the third party supplies.[5]

[5] *See Pennsylvania's Electric Power Future: Trends and Guiding Principles*, Susan F. Tierney, Ph.D., Analysis Group (January 2008) ("2008 Market Study") at p.11.

A copy of the 2008 Market Study is attached to these comments. While the 2008 Market Study was prepared to provide recommendations to Pennsylvania – because that state over the next several years will be making decisions about individual utilities' default service procurements – it provides useful analysis to consider in jurisdictions like Illinois that rely upon competitive wholesale procurement, especially where the IPA will be starting with a clean slate to determine how best to meet the future default procurement needs of Illinois' electric utilities. Of particular importance in the 2008 Market Study is its finding that:

> In states with retail choice where the local distribution company focuses of "delivering" power and no longer carries out generation functions, the utility no longer has comparative advantages in power markets. Here, the utility provides a basic product – "full-requirements generation service" – and [serves] as the conduit for these customers in the competitive market place. In this conduit role, the utility calls upon third-party suppliers to provide all of the necessary components of providing supply to customers: energy, capacity, ancillary and other services (such as meeting Alternative Energy Service requirements) at all times and at all levels of customer demand over the course of a day or a season. **The utility can make good use of competitive markets to find lowest-cost supplies of "full requirements" power to meet the needs of basic generation service customers; it can do so by defining the product it purchases from competitors, rather than choosing the individual components of a particular portfolio of generation resources used to provide the product.** It is the experienced participants in wholesale markets who take on the tasks of developing a portfolio of resources, making physical arrangements to lock-in certain supply, arranging for transmission of the supplies, making financial arrangements to hedge their financial and price risk, and offering to sell at a fixed price offer in competition with other suppliers.[6]

The results of the procurement for the First Energy utilities in Ohio is yet another recent real-world example of the benefits of a full requirements product. The descending clock auction for generation and transmission service for the June 1, 2009 – May 31,

[6] 2008 Market Study at p.11 (emphasis added).

2011 supply period cleared at a price that will result in a rate decrease by as much as 16% for residential customers.[7] "We are more than pleased that ratepayers in northern Ohio, many of whom have been victimized by the economy, will benefit from the outcome of this energy auction," PUCO Chairman Alan R. Schriber stated.[8]

Similarly, the IPA can best access competitive wholesale markets by procuring full requirements products, rather than by trying to purchase individual components of service (*i.e.*, energy, capacity, RECs, etc.) on their own.

<u>Conclusion</u>

Constellation recommends that future procurement plans and procurement events conducted by the Illinois Power Agency and evaluated by the Commission reflect these improvements to the procurement process.

Respectfully Submitted,

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[7] http://www.puco.ohio.gov/PUCO/MediaRoom/MediaRelease.cfm?id=9388
[8] *Id.*