

Illinois Power Agency Procurement Events

Invitation to Comment on Proposed Changes to the Standard Contract Forms Procurement of Energy Blocks for the Ameren Portfolio, the ComEd Portfolio and the MidAm Portfolio

Invitation to Comment

On September 28, 2015, the Illinois Power Agency (“IPA”) submitted its Procurement Plan (“Plan”) to the Illinois Commerce Commission (“ICC”) in compliance with Public Act 095-0481 (the “Act”), which includes the Illinois Power Agency Act (“IPA Act”). The ICC approved the Plan with modifications on December 16, 2015. The Plan provides for the procurement of energy supply to meet the supply needs of eligible retail customers of Ameren Illinois Company (“Ameren” or “AIC”), of Commonwealth Edison Company (“ComEd”) and of MidAmerican Energy Company (“MidAm”) through a Request for Proposals (“RFP”). The RFP will procure on-peak and off-peak blocks of monthly and/or multi-month durations for the period June 1, 2016 to May 31, 2019.

The Procurement Administrator invites interested parties to submit their comments on the proposed energy contracts for each of AIC, ComEd and MidAm.

For AIC and ComEd, the Procurement Administrator is proposing to use the 2015 energy contracts with minor changes. Please note that comments are solicited on proposed changes that have been made relative to the previously used 2015 energy contracts only and not on the entire contract.

For MidAm, the Procurement Administrator is proposing as the standard contract form the EEI Master Power Purchase & Sale Agreement with certain modifications and specific terms. Suppliers may submit comments on the draft contract in its entirety.

Timeline and Process

The timeline and process for interested parties to provide comments on all proposed changes are as follows:

- Please enter your comments in the Comment Form and submit the Comment Form to the Procurement Administrator by email at the following e-mail address: Illinois-RFP@nera.com
- Where appropriate, you may submit your comments with tracked changes in Microsoft Word within the Comment Form. The Comment Form also includes boxes so that you may provide explanatory notes.
- For MidAm, the Procurement Administrator has posted the proposed draft contract in Microsoft Word format. If you are submitting comments, each of your comments must be clearly indicated in the draft contract document with tracked changes in Microsoft Word. We strongly encourage you to provide explanatory notes either in a separate document or highlighted in tracked changes.
- The Comment Form will ask for a telephone number and email contact information in the event that the Procurement Administrator seeks clarification regarding your comments.
- **The deadline to provide comments is 6 PM CPT on March 14, 2016.**

Please direct any questions regarding this comment process to the Procurement Administrator at Illinois-RFP@nera.com.

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Proposed Changes

All proposed changes as numbered below are provided for the convenience of interested parties in an attachment to this document.

Ameren Illinois Company (“AIC”)

The Ameren Illinois Company’s standard contract form is the EEI Master Power Purchase & Sale Agreement with certain specific terms (the “(AIC) Confirmation Agreement”). A summary of the proposed changes from the previously used 2015 energy contract are provided below.

Ameren Proposed Changes		
Proposed Change	Section	Nature of Change
AIC-1	Opening Paragraph	Change of date
AIC-2	Section 1 C	Change related to use of updated Letter of Credit Forms
AIC-3	Section 3	Changes to Contact
AIC-4	Section 5 A 19 (i)	Corrections to be consistent with language in underlying agreement
AIC-5	Section 5 A 19 (iii)	Use of defined terms
AIC-6	Section 5 A 35	Updated language related to “Mobile-Sierra” doctrine.
AIC-7	Section 5 B 2 (ix)	Change related to use of updated Letter of Credit Forms
AIC-8	Section 5 B 2 (x)	Change related to use of updated Letter of Credit Forms
AIC-9	Section 5 B 5 (ii)	Corrections to be consistent with language in underlying agreement
AIC-10	Section 5 B 10 (iii)	Clarification that value is not a placeholder.
AIC-11	Confirmation Agreement Signature Page	To be explicit that signatures are for the execution of the agreement.
AIC-12	Letter of Credit Forms	Standard Forms have been replaced

Changes 1, 3, 4, 5, 9, 10 and 11 are administrative in nature and they do not modify the terms of the (AIC) Confirmation Agreement. As such, the Procurement Administrator does not expect comments from interested parties in regard to these proposed changes.

Commonwealth Edison Company (“ComEd”)

The standard contract form for Commonwealth Edison Company is the EEI Master Power Purchase & Sale Agreement with certain specific terms (the “(ComEd) Master Agreement”). A summary of the proposed changes from the previously used 2015 energy contract are provided below.

ComEd Proposed Changes			
Proposed Change	Document	Section	Nature of Change
ComEd-1	Master Agreement Coversheet	Contacts	Removal of Duns and updates to contact information
ComEd-2	Master Agreement Coversheet	Changes to EEI Master, A 14	Changes to implement an electronic contract execution process.
ComEd-3	Master Agreement Coversheet	Changes to EEI Master, A 16	Use of defined terms

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ComEd-4	Master Agreement Coversheet	Changes to EEI Master, A 25	Corrections to references to law.
ComEd-5	Master Agreement Coversheet	Changes to EEI Master, A 32	Updated language related to "Mobile-Sierra" doctrine.
ComEd-6	Master Agreement Coversheet	Changes to Collateral Annex, B 2	Elimination of duplicate definition. This term is previously defined in Section 1.22.1 of the EEI Master.
ComEd-7	Master Agreement Coversheet	Signature block	Align name of Party in signature block
ComEd-8	Schedule 1a to Collateral Annex, Option 2	Letter of Credit, Page 2, Para 5	Corrections to references to ISP.
ComEd-9	Sample Exhibit A	Product Information	Eliminate duplicate definitions of on-peak and off-peak hours
ComEd-10	Sample Exhibit A	Confirmation Sample	Eliminate superfluous fields that are not applicable.
ComEd-11	Exhibit A (Option 3) to Schedule 1a to Collateral Annex	Letter of Full Transfer (Option 3)	A new document was added. A third option is provided for the Letter of Full Transfer.

Changes 1, 3, 4, 6, 7, 8, 9 and 10 are administrative in nature and they do not modify the terms of the (ComEd) Master Agreement. As such, the Procurement Administrator does not expect comments from interested parties in regard to these proposed changes.

MidAmerican Energy Company ("MidAM")

For MidAm, the Procurement Administrator is proposing as the standard contract form the EEI Master Power Purchase & Sale Agreement with certain modifications and specific terms. The Procurement Administrator has posted the proposed draft contract in Microsoft Word format.

Suppliers may submit comments on the draft contract in its entirety. If you are submitting comments, each of your comments must be clearly indicated in the draft contract document with tracked changes in Microsoft Word.

Attachment to Invitation to Comment

All proposed changes are provided below for the convenience of interested parties.

(AIC) Confirmation Agreement

AIC-1:

THIS CONFIRMATION AGREEMENT shall confirm the Transaction agreed to on _____, ~~2015~~2016 between _____ (“Seller” or “Party A”) and Ameren Illinois Company (“Buyer” or “Party B”) regarding the sale/purchase of the Product under the terms and conditions that follow. Party A and Party B are sometimes referred to herein as a “Party” or collectively as the “Parties”.

AIC- 2:

The Master Agreement, together with the exhibits and any written supplements hereto, the Confirmation Agreement, the Party A Tariff, if any, the Party B Tariff, if any, and any designated collateral, credit support or margin agreement or similar arrangement between the Parties (including the Collateral Annex, the Form of Guaranty and the ~~Form of Irrevocable Standby~~ Letter of Credit ~~Forms~~) shall be referred to as the “Agreement” or the “Confirmation Agreement”.

AIC- 3:

Credit and Collections:

Attn:
Phone:
Facsimile:
Email:

Credit and Collections:

Attn: ~~Lee Lalinsky~~Daniel Deschler
Phone: (314) ~~206-1166~~554-3540
Facsimile: (314) 206-0210
Email: DLAICCCreditRiskManagement@ameren.com

AIC- 4:

19. Section 5.1—Event of Default.

(i) The following is added immediately to the end of Section 5.1(g)

“provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under either (i) or (ii) above if, as demonstrated to the reasonable satisfaction of the other Party, (a) the event or condition referred to in (4i) or the failure to pay ~~or deliver~~ referred to in (2ii) is a failure to pay ~~or deliver~~ caused by an error or omission of an administrative or operational nature; and (b) funds were available to such Party to enable it to make the relevant payment when due; and (c) such relevant payment is made within three (3) Business Days following receipt of written notice from an interested Party of such failure to pay;”

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AIC- 5:

19. Section 5.1—Event of Default. ...

(iii) The following is added to the Master Agreement as subsection 5.1(i):

“(i) If Seller fails to schedule Product or if Buyer fails to confirm the Seller’s submitted schedule, then the other Party will send a written notice to such Party and such Party will be permitted to cure the schedule failure within five (5) ~~business days~~ **Business Days** of such notice. Failure to cure within that time shall be deemed an Event of Default as per Section 5.1 of the Master Agreement. In addition, if the Seller incorrectly schedules the ~~transaction~~ **Transaction**, it shall have five (5) Business Days to correct such error after receiving written notification from the Buyer. The Buyer shall, in turn, have the later of five (5) Business Days after receiving written notification from the Seller that the corrected schedule was entered or the original deadline indicated in the Confirmation Agreement to confirm the schedule(s).”

AIC- 6:

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall ~~be solely be~~ the ~~“public interest” application of the “just and reasonable”~~ **most strict standard of review** set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008) **and further refined in NRG Power Marketing v. Maine Public Utilities Commission, 558 U.S. 165 (2010)** (the “Mobile-Sierra” doctrine). ~~The Parties acknowledge that this agreement constitutes a contract rate, and all future proposed changes or challenges will be reviewed pursuant to the public interest application of the just and reasonable standard of review.~~

AIC- 7:

““Letter of Credit” means an irrevocable, transferable, standby Letter of Credit issued by a **Qualified Institution, in the form attached hereto as Exhibit B. Any Letter of Credit, Availability Certificate (Annex 3 to the Letter of Credit) and Notice of Extension of Letter of Credit (Annex 5 to the Letter of Credit) issued at the request of and for the account of Party A on or after the date of execution for this Agreement, under all of Party A’s Fixed Price Customer Supply Contracts, will be subject to the Credit Rating requirements for banks issuing Letters of Credit as set forth in this Confirmation Agreement** major U.S. commercial bank or a foreign bank with a U.S. branch office or a U.S. agency office utilizing either of the forms attached hereto as Exhibit B.”

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AIC- 8:

““Letter of Credit Default” means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain ~~a Credit Rating of at least “A” by S&P and “A2” by Moody’s and, if rated by Fitch, at least “A” by Fitch;~~ during the Term the credit rating required under the Letter of Credit as of the Date of Issuance (as that term is used in the Letter of Credit); (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of any Transaction under this Confirmation Agreement; or (v) any event analogous to an event specified in Section 5(a)(vii) of this Confirmation Agreement shall occur with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to the Pledging Party in accordance with the terms of this Annex.”

AIC- 9:

Subparagraph (a) is amended by deleting “before the Notification Time on a Business Day” and replacing it with “before the Notification Time on a Local Business Day”.

AIC- 10:

		PARTY A	PARTY B	Valuation Percentage
(A)	Cash	[X]	N/A	{100}%

AIC- 11:

IN WITNESS WHEREOF, the Parties have caused this Confirmation Agreement to be executed as of the ____ day of _____, 2016.

AIC- 12:

The Letter of Credit Forms have been replaced in their entirety. In the interest of space, these are not included here. Please see revised Exhibit B and Schedules to Exhibit B in the AIC Confirmation Agreement.

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(ComEd) Master Agreement

ComEd-1:

Name (_____ or "Party A")	Name ("Commonwealth Edison Company" or "Counterparty" or "Party B")
All Notices:	All Notices:
Street: _____	Street: 1919 Swift Drive
City: _____	City: Oakbrook Oak Brook, IL Zip: H- 60523-15801502
Zip: _____	
Attn: _____	Attn: Vice President, Energy Acquisition
Phone: _____	Phone: 630-684-3558
Facsimile: _____	Facsimile: 630-684-3580
Duns: _____	Duns: 006929509-
E-mail: _____	E-mail: <u>wb&cstaff@comed.com</u>
Federal Tax ID Number: _____	Federal Tax ID Number: 36-0938600
...	
...	
Scheduling:	Scheduling:
Attn: _____	Attn: Manager of Wholesale Supplier Operations
Phone: _____	Phone: 630-684-3582
Facsimile- or : _____	Facsimile: 630-684-3580
E-mail: _____	E-mail: <u>wsostaff@comed.com</u>

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ComEd-2:

14. Section 2.3—Confirmation

Section 2.3 is amended to read, in its entirety, as follows:

2.3 Confirmation. The Parties shall confirm a Transaction by executing a confirmation (“Confirmation”) substantially in the form of Exhibit A.

The actions and timing required to execute the Agreement, including any Confirmations, any Guaranty, if applicable, and any other related documents is summarized by the following table:

Party	Timing	Action
ICC	Day 0	Approves the results and announces that Seller has been selected.
Buyer	by 45:00 PM EPT on the first Business Day following Day 0 (Day A)	Prepares and sends a partially executed electronic copy of the Agreement, including any Confirmations, any Guaranty, if applicable, and any other related documents to the Seller.
Seller and if applicable, Seller's Guarantor	by 5:00 PM EPT on the second Business Day following Day 0 (Day B)	Executes the signature pages of the partially executed electronic copy of the Agreement, including any Confirmations, any Guaranty, if applicable, and any other related documents, and sends such fully executed signature pages to Buyer electronically. For the record of the Parties, executes and sends two (2) hardcopy originals of the Agreement, including any Confirmations, any Guaranty, if applicable, and any other related documents to Buyer via overnight delivery.
Buyer	by end of day on the seventh Business Day following Day 0 (Day G)	For the record of the Parties, executes the two (2) hardcopy originals of the Agreement, including any Confirmations, any Guaranty, if applicable, and any other related documents; retains one (1) original and sends the other to the Seller

ComEd-3:

16. Section 5.1—Event of Default

Section 5.1(h)(ii) shall be amended by deleting the following phrase from the third and fourth line thereof: "and such failure shall not be remedied within three (3) Business Days after written notice".

The following is added to the Agreement as subsection 5.1(i)

- (i) If Seller fails to schedule Product or if Buyer fails to confirm the Seller's submitted schedule, then the other Party will send a written notice to such Party and such Party will be permitted to cure the schedule failure within five (5) ~~business days~~ **Business Days** of such notice. Failure to cure within that time shall be deemed an Event of Default as per Section 5.1 of the Master Agreement. In addition, if the Seller incorrectly schedules the ~~transaction~~ **Transaction**, it shall have five (5) Business Days to correct such error after receiving written notification from the Buyer. The Buyer shall, in turn, have the later of five (5) Business Days after receiving written notification from the Seller that the corrected schedule was entered or the original deadline indicated in the Confirmation(s) to confirm the schedule(s).

ComEd-4:

25. Section 10.2—Representations and Warranties

....

Section 10.2 is amended by adding the following as a new subsection (xiii):

- (xiii) Each Party is an "Eligible Contract Participant" as defined in Section 1a(~~4218~~) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(~~4218~~).

ComEd-5:

32. Article 10: Miscellaneous

The following is added to the Agreement as Section 10.12: FERC Standard of Review; Mobile-Sierra Waiver.

- (a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall ~~be solely be~~ the ~~"public interest" application of the "just and reasonable" most strict standard of review~~ set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. ~~___ (2008) (the "Mobile-Sierra" doctrine).~~ 527 (2008) and further, refined in NRG Power Marketing v. Maine Public Utilities Commission, 558 U.S. 165 (2010) (the "Mobile-Sierra" doctrine). The Parties acknowledge that this agreement constitutes a contract rate, and all future proposed changes or challenges will be reviewed pursuant to the public interest application of the just and reasonable standard of review.

ComEd-6:

2. Paragraph 1. Definitions

... ..

The following definition for “Fitch” is added as follows:-

_____ ~~“Fitch” means Fitch Ratings (a subsidiary of Fimilac, S.A.), or its successor.~~

ComEd-7:

Party A Name: _____ Party B Name: Commonwealth Edison Company

Party A Name _____ Party B Name

ComEd-8:

Rule 3.14(ab) of the ISP as it applies to this Irrevocable Standby Letter of Credit is hereby ~~further~~ modified to provide that any alternate place for presentation that we designate must be located in the United States.

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ComEd-9:

A: _____

_____Contract Quantity: _____

Contract Price: **\$XX.XX/MWh**

Delivery Period: Beginning on Month X, day Y, year Z and ending on Month X, day Y, year Z

~~[] On-peak: 5X16 Monday-Friday, HE 0800 through HE 2300; excluding NERC Holidays, Eastern-Prevailing Time~~

~~[] Off-peak: 5X8 Monday-Friday, HE 0100 through HE 0700 and HE 2400; 2X24 Saturday-Sunday, HE 0100 through HE 2400; NERC Holidays HE 0100 through HE 2400, Eastern-Prevailing Time~~

... ..

C: _____

Contract Quantity: _____

Contract Price: **\$XX.XX/MWh**

Delivery Period: Beginning on Month X, day Y, year Z and ending on Month X, day Y, year Z

~~[] On-peak: 5X16 Monday-Friday, HE 0800 through HE 2300; excluding NERC Holidays, Eastern-Prevailing Time~~

~~[] Off-peak: 5X8 Monday-Friday, HE 0100 through HE 0700 and HE 2400; 2X24 Saturday-Sunday, HE 0100 through HE 2400; NERC Holidays HE 0100 through HE 2400, Eastern-Prevailing Time~~

... ..

Delivery Point: ComEd Residual Aggregate, Pnode ID 116472935 (COMED RESID AGG) or its successor

For each product described above:

On-peak: 5X16 Monday-Friday, HE 0800 through HE 2300; excluding NERC Holidays, Eastern-Prevailing Time

Off-peak: 5X8 Monday-Friday, HE 0100 through HE 0700 and HE 2400; 2X24 Saturday-Sunday, HE 0100 through HE 2400; NERC Holidays HE 0100 through HE 2400, Eastern-Prevailing Time

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ComEd-10:

Other Charges: N/A

Special Conditions:

Scheduling: Seller shall submit Contract Quantity through PJM InSchedules four weeks prior to the beginning of the Delivery Period. Buyer shall confirm the Contract Quantity submitted by Seller through PJM InSchedules three weeks prior to the beginning of the Delivery Period.

Market: Seller must schedule and deliver in the PJM Day-Ahead Market.

Option Buyer: N/A

Option Seller: N/A

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

ComEd- 11:

A third option for the Letter of Full Transfer has been added. In the interest of space, this document is not included here. Please see Option 3 of Exhibit A to the Schedule 1A to the Collateral Annex in the ComEd Energy Master Agreement.