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~~DRAFT March 30, 2009~~ Renewables RFP

Commonwealth Edison Company  
2009 Renewable Energy Resources  
Request for Proposals  
Process and Rules

~~March 30~~ April 10, 2009

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## ARTICLE I. INTRODUCTION

### I.1. Overview

- I.1.1. Capitalized terms in this document are either defined explicitly herein or are defined in the Master Renewable Energy Certificate Purchase and Sale Agreement (“REC Master Agreement”), which is attached as Appendix 1.
- I.1.2. Pursuant to Illinois Public Act 95-0481, effective August 28, 2007 (the “Act”), including the Act’s amendments to the Public Utilities Act (“PUA”), on October 21, 2008 the Illinois Power Agency (“IPA”) filed a Procurement Plan with the Illinois Commerce Commission (“ICC”). The Procurement Plan specifies that the renewable energy procurement requirements of the Illinois Renewable Energy Portfolio Standard (“RPS”) will be satisfied by procurement of Renewable Energy Credits (“RECs”) from eligible renewable energy resources. A REC represents all the environmental attributes corresponding to one megawatt-hour of energy generated from renewable energy resources.
- I.1.3. The ICC issued an Order on January 7, 2009 substantially approving the IPA’s Procurement Plan. For purposes of this document the “Procurement Plan” means the Procurement Plan as amended by this ICC Order. The Procurement Plan specifies that a Request for Proposals (“RFP”) will be issued to procure renewable energy resources up to an amount of 1,564,360 RECs in a cost-effective manner. These RECs will be procured subject to the resource type, location, and rate impact criteria specified in subsection 1-75(c) of the Illinois Power Agency Act (“Act”) (20 ILCS 3855/1-75(c)). The present document, in conjunction with all its appendices as described in more detail in Section I.5, is the RFP. The present document alone is referred to as the “REC Rules”. These REC Rules detail the qualification standards and bidding process.

I.1.4. The IPA has retained NERA Economic Consulting (“NERA”) as the Procurement Administrator for the ComEd portfolio. NERA will administer the present RFP. The ICC has retained Boston Pacific Company, Inc. (“Boston Pacific”) as the Procurement Monitor. The Procurement Monitor will report and monitor the progress of the procurement event for the ICC.

I.1.5. A Proposal is a response to this RFP. A supplier that submits any part of a response to this RFP is a REC Bidder.

I.1.6. A Proposal consists of two (2) parts. The first part of the Proposal (“Part 1 Proposal”) is a REC Bidder’s response to the qualification standards described in Article IV of these REC Rules. REC Bidders that qualify pursuant to a successful Part 1 Proposal may submit the second part of the Proposal (“Part 2 Proposal”). The Part 2 Proposal, described in detail in Article V, includes a REC Bidder’s offers and financial support for these offers.

## I.2. Products and Bids

I.2.1. This RFP solicits suppliers to deliver RECs generated by a renewable energy resource as defined by the Act during the period June 1, 2009 to May 31, 2010. The RFP recognizes six (6) different Products, each corresponding to RECs generated by a renewable resource of a given type and location. The Products correspond to whether a REC is produced by a wind resource or not, and correspond to whether a REC is produced by a renewable resource located within Illinois, or by a renewable resource located in a state adjoining Illinois, or located in another state. Adjoining States are Wisconsin, Iowa, Missouri, Kentucky, Indiana and Michigan. Other States are states other than Illinois, Wisconsin, Iowa, Missouri, Kentucky, Indiana, and Michigan. Table I.1 below further defines these Products.

Table I-1. Products.

Product	Location and Type of Eligible Renewable Energy Resource
1. Illinois Wind	A wind resource physically located in the state of Illinois
2. Illinois Non-Wind	A non-wind renewable energy resource, as defined in the Act, physically located in Illinois
3. Adjoining State Wind	A wind resource physically located in Wisconsin, Iowa, Missouri, Kentucky, Indiana, or Michigan
4. Adjoining State Non-Wind	A non-wind renewable energy resource, as defined in the Act, physically located in Wisconsin, Iowa, Missouri, Kentucky, Indiana or Michigan
5. Other State Wind	A wind resource physically located in a state other than Illinois, Wisconsin, Iowa, Missouri, Kentucky, Indiana or Michigan
6. Other State Non-Wind	A non-wind renewable energy resource, as defined in the Act, located in a state other than Illinois, Wisconsin, Iowa, Missouri, Kentucky, Indiana or Michigan

I.2.2. Eligible renewable energy resources do not include the incineration, burning, or heating of tires, garbage, general household, institutional, and commercial waste, industrial lunchroom or office waste, landscape waste other than trees and tree trimmings, railroad crossties, utility poles, and construction or demolition debris, other than untreated and unadulterated waste wood.

I.2.3. The Procurement Plan specifies a MWh target of 1,564,000~~360~~, which translates to a Target of 1,564,000~~360~~ RECs to be procured. The number of RECs procured through this RFP will not exceed this Target. In accordance with the Act, the Target is based on purchasing renewable energy resources corresponding to 4% of the actual amount of electricity supplied to eligible retail customers in the planning year ending immediately prior to the procurement. Eligible retail customers include residential

and other customers that are less than 100 kW in size who are entitled to purchase fixed-price bundled electric service from ComEd.

I.2.4. The cost of procuring the RECs, including the purchase price of procuring the RECs and other costs incurred in the procurement of these RECs, will not exceed a pre-stated Budget ~~(approximately of \$39,700,000)-747,813.~~ This Budget will be based upon the rate impact threshold of the Act.

I.2.5. A REC Bidder may bid on any number of Products and may bid on all Products. A REC Bidder may bid on a number of RECs of each Product not to exceed the Target.

I.2.6. A "Bid" is a price for one REC of a given Product. If a REC Bidder wins more than two (2) RECs of a given Product, the REC Bidder is paid for each REC of that Product won at the average price of the RECs that the REC Bidder wins of that Product.

I.2.7. The evaluation of Bids and the selection of RECs first give priority to cost effectiveness, second to wind resources, and last to location. Prior to any selection of RECs based on priority, all Bids that fail to meet the benchmarks established by the Procurement Administrator, the Procurement Monitor and the IPA are eliminated. This is further discussed in Paragraph VI.2.6. For Bids that meet or beat the benchmarks, and for RECs of a given source (wind or non-wind) and a given location, RECs with the lowest prices are selected first. For Bids that meet or beat the benchmarks, and for RECs of a given price and a given location, RECs from wind resources are selected over RECs from non-wind resources eligible under the Act (subject to a threshold of 75% wind). For Bids that meet or beat the benchmarks, and for RECs of a given price and of a given source (wind or non-wind), RECs from resources located in Illinois are selected over RECs from resources located in Adjoining States, and RECs from resources located in Adjoining States are selected over RECs from resources located in Other States. The evaluation and selection in no case will result in the procurement of RECs that exceed the Target or that combine to

cost more than the Budget. Details of the evaluation and selection procedure are provided in Appendix 5.

- I.2.8. RECs procured through this RFP will be transferred from the supplier's account in PJM Environmental Information System ("EIS")'s Generation Attribute Tracking System ("GATS") or in the Midwest Renewable Energy Tracking System ("M-RETS") to the account of ComEd in the relevant tracking system.

### I.3. Submission of Proposals

- I.3.1. REC Bidders must use the Part 1 Form provided as Appendix 2 of these REC Rules as well as the Supplement to the Part 1 Form to respond to the qualification standards described in Article IV of these REC Rules. The Part 1 Form, the Supplement to the Part 1 Form, as well as other Forms mentioned in these REC Rules, are ~~provided as Appendices to these REC Rules and are also~~ available electronically on the RFP Web site: [www.comed-energyrfp.com](http://www.comed-energyrfp.com).

- I.3.2. The Part 1 Proposal for a REC Bidder consists of three (3) original completed Part 1 Forms as well as one (1) copy of all documents required by the Part 1 Form, including the Supplement to the Part 1 Form. These additional documents required for the Part 1 Proposal can be submitted either in hard copy, or in electronic format on a Compact Disk ("CD"). The qualification standards include the submission of contact information, general representations, and the payment of a Bid Participation Fee.

- I.3.3. REC Bidders must use the Part 2 Form provided as Appendix 3 of these REC Rules and the Bid Form provided as Appendix 4 of these REC Rules to respond to the Part 2 Proposal requirements described in Article V of these REC Rules. The Part 2 Proposal consists of three (3) original completed Part 2 Forms, one (1) Bid Form, and all other documents required by the Part 2 Form, in the number of originals specified in Article V. The Part 2 Proposal requirements include additional representations, acceptance of the terms of the REC Master Agreement, execution of two (2) copies of the

signature page from the REC Master Agreement, submission of Bids, and submission of a Pre-Bid Letter of Credit in an amount sufficient to support the Bids.

- I.3.4. The schedule for this RFP is provided in Table II-1 and will be updated if necessary on the RFP Web site: [www.comed-energyrfp.com](http://www.comed-energyrfp.com). Part 1 Proposals are received and processed during a specific timeframe, the Part 1 Proposal Window, which extends from April 15, 2009 until noon on April 22, 2009. All times in this RFP are Central Prevailing Times ("CPT") unless specifically noted. The last day of the Part 1 Proposal Window, April 22, 2009, is called the Part 1 Date. A REC Bidder that submits a Part 1 Proposal during the Part 1 Proposal Window and who is qualified pursuant to its Part 1 Proposal may submit a Part 2 Proposal. Each REC Bidder that submits a Part 1 Proposal will be notified whether it has qualified to submit a Part 2 Proposal no later than 6 PM on April 27, 2009.
- I.3.5. Part 2 Proposals are received and processed during a specific timeframe, the Part 2 Proposal Window, which extends from April 30, 2009 to noon on May 7, 2009. The last day of the Part 2 Proposal Window, May 7, 2009, is called the Part 2 Date. All materials for the Part 2 Proposals, except the REC Bidders' Bids, must be received by noon on the Part 2 Date. The day the Bids are due, May 11, 2009, is called the Bid Date. Each REC Bidder's Bids must be received between 9 AM and noon on the Bid Date. All Bids from Part 2 Proposals that are complete and compliant by 3 PM on the Bid Date are evaluated on the Bid Date.
- I.3.6. Within one (1) business day of the Bid Date, the Procurement Administrator will submit to the ICC a confidential report that will provide the results of the bidding, as well as a recommendation on whether these results should be accepted or rejected. Also within one (1) business day of the Bid Date, the Procurement Monitor will submit to the ICC a confidential report regarding the results of the RFP. The ICC will decide whether to accept or reject the results of the RFP within two (2) business days of

receiving the confidential reports from both the Procurement Administrator and the Procurement Monitor.

I.3.7. ComEd and the winning REC Bidders will execute the Confirmations of the transactions as provided in the REC Master Agreement within three (3) business days of the ICC decision.

I.3.8. If the ICC rejects the results of the procurement event, the Procurement Administrator, the Procurement Monitor, and the ICC Staff will meet within 10 days of the ICC decision. The Procurement Administrator may implement changes and hold a second procurement event if such changes would address the concerns that caused the Commission to reject the results of the first procurement event.

#### **I.4. Seller Obligations**

I.4.1. The results of this procurement event are subject to approval by the ICC. If the ICC approves the results of the procurement event, ~~in whole or in part,~~ a winning REC Bidder becomes a Seller of RECs to ComEd.

I.4.2. This Section describes in general terms a few key provisions of the REC Master Agreement. This is a summary only and is subject to and qualified in its entirety by the REC Master Agreement provided as Appendix 1 to the REC Rules. Each REC Bidder accepts the obligations and associated rights to provide RECs as defined in the REC Master Agreement.

I.4.3. Under the REC Master Agreement, the Seller provides ComEd with "Standard RECs", namely RECs that include all environmental attributes represented by renewable electricity generation associated with the RECs. The price received by the Seller for a given Product is the average (arithmetic mean) of the ~~RFP~~REC Bidder's own winning Bids for all RECs won for that Product. The Seller is paid up to six (6) different prices corresponding to the six (6) Products or categories of RECs depending on renewable generation source and location.

I.4.4. The Seller delivers RECs to ComEd by the day before the second-to-last Business Day of each month. Deliveries may start as early as June 2009. The Seller may postpone the first delivery of RECs until October 2009 but no later. The Seller must have delivered all RECs under the contract by the day before the second to last Business Day of July 2010.

I.4.5. The REC Master Agreement requires the posting of Performance Assurance in proportion to the value of RECs still to be delivered under the contract.

### I.5. Summary of RFP Documents

I.5.1. The following documents are appended to the REC Rules, and shall be considered an integral part of this RFP:

Appendix 1: Master Renewable Energy Certificate Purchase and Sale Agreement

Appendix 2: Part 1 Form

Appendix 3: Part 2 Form

Appendix 4: Bid Form

Appendix 5: Priority in REC Selection (Evaluation Flow Chart)

Appendix 6: Standard Pre-Bid Letter of Credit

Appendix 7: Officer's Certificate (for REC Bidders under an Agency Agreement)

Appendix 8: Confidentiality Statement

## ARTICLE II. Information and Schedule

### II.1. RFP Web Site

II.1.1. The Procurement Administrator has established an RFP Web site that is the main source of information for this RFP. Prospective REC Bidders and other stakeholders can visit this RFP Web site to obtain information and documents related to this RFP. The RFP Web site address is [www.comed-energyrfp.com](http://www.comed-energyrfp.com).

II.1.2. The RFP Web site contains the sections described below. New sections may be added as necessary to assist prospective REC Bidders.

Home: This section provides announcements of interest to prospective REC Bidders and to other interested parties, an outline of the 2009 RFP process, and a summary of important dates.

Calendar: This section provides the timeline for the main events in this RFP.

Announcements: This section provides announcements and links to the relevant documents.

Standard Products Documents: This section provides documents regarding the Standard Products RFP.

Renewables Documents: This section provides documents regarding this REC RFP.

FAQs: The Procurement Administrator answers questions from prospective REC Bidders and provides an answer to the question via email to the questioner. In addition, a copy of the question and answer will be posted in this section of the RFP Web site so that all stakeholders and prospective REC Bidders have access to the same information. Aspects of the question and/or answer that might identify the party asking the question will be removed before posting.

Ask a Question: In this section, all stakeholders, including prospective REC Bidders, are able to ask questions of the Procurement Administrator via a web form.

Register: This section gives interested parties an opportunity to register their email address to receive updates and announcements regarding this RFP. The Procurement Administrator advises registrants of important modifications to the Web site, such as postings of new documents.

Links: This section provides various links that may be of interest to prospective REC Bidders.

Previous RFPs: This section provides links to the documents from previous RFPs.

## II.2. RFP Schedule

II.2.1. The following is the schedule for this procurement event. Specific times for submission of materials for the Part 1 Proposals and Part 2 Proposals are provided elsewhere in this RFP. All such times are Central Prevailing Time unless specifically noted. This schedule may be amended if circumstances warrant. Any such amendments will be posted to the RFP Web site.

Table II-1. RFP Schedule

<u>Event</u>	<u>Date</u>
IPA files Procurement Plan	October 21, 2008
Commission Order Regarding Procurement Plan	January 7, 2009
Web site opens	March 25, 2009
Consultation on REC Master Agreement opens	March 25, 2009
Draft RFP Documents are issued	March 30, 2009
Consultation on REC Master Agreement closes	April 1, 2009
Final documents are issued	April 10, 2009
Supplement to the Part 1 Form is issued	April 13, 2009
Bidder Information Call	April 14, 2009
Opening of Part 1 Proposal Window	April 15, 2009
Part 1 Date (Close of Part 1 Proposal Window and last day to submit Part 1 Proposals)	April 22, 2009
REC Bidders are qualified for submission of Part 2 Proposals	April 27, 2009
Opening of Part 2 Proposal Window	April 30, 2009
Bidder Training	May 6, 2009

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Event	Date
Part 2 Date <del>-(Close of Part 2 Window and last day to submit Part 2 Proposals Except Bids-are Due)</del>	May 7, 2009
Bid Date (Due Date for Bids)	May 11, 2009
Procurement Administrator submits confidential report	No later than May 12, 2009
ICC makes decision on results of RFP	No later than May 14, 2009
REC Master Agreement and Confirmations fully executed	No later than May 19, 2009

### ARTICLE III. General Requirements for Proposals

- III.1.1. An entity that submits any part of a response to this RFP is a REC Bidder. Each REC Bidder can submit at most one Part 1 Proposal and one Part 2 Proposal. A REC Bidder that is qualified by submitting a Part 1 Proposal that fulfills all requirements described in Article IV may submit a Part 2 Proposal.
- III.1.2. All Part 1 Proposals and all Part 2 Proposals are submitted to the Procurement Administrator in accordance with the instructions provided in Article VI.
- III.1.3. All representations and certifications required by this RFP must be made by a single individual, who is an Officer of the REC Bidder. An Officer of the REC Bidder is an individual empowered to undertake contracts and bind the REC Bidder. As a requirement of the Part 1 Proposal, the REC Bidder must provide the name, title, and full contact information (address, phone number, fax number, email address) of the Officer of that REC Bidder who will be making the representations in the Part 1 and the Part 2 Proposals.
- III.1.4. Each REC Bidder must comply with all Part 1 Proposal requirements described in Article IV. Section IV.1 describes the contact information and representations required. Section IV.2 describes financial requirements. Section IV.3 describes the regulatory representations required. Section IV.4 lists the additional representations that are required. Section IV.5 explains that a Bid Participation Fee is required with the Part 1 Proposal. Section IV.6 lists additional requirements applicable only to REC Bidders submitting a Proposal under an Agency Agreement.
- III.1.5. All information provided and certifications made in the Part 1 Proposal must remain valid and remain in full force until ~~eight~~ seven (7) business days after the Bid Date. Regardless of the reason, if any information provided in the Part 1 Proposal changes or any previous certification fails to remain valid, it is the sole responsibility of the REC Bidder to notify the Procurement Administrator. Failing to do so may result in

disqualification of the REC Bidder and of its Proposal. The Procurement Administrator reserves the right to change the assessment of qualifications based on any revised information provided by the REC Bidder.

- III.1.6. Each REC Bidder must comply with all Part 2 Proposal requirements as stipulated in Article V. Section V.1 describes the contact information and representations required by the Part 2 Proposal. Section V.2 describes the Pre-Bid Letter of Credit required to support the REC Bidder's Bids. Section V.3 describes that the REC Bidder must provide two (2) executed signature pages from the REC Master Agreement. Section V.4 describes the requirements for the submission of Bids.
- III.1.7. Proposals that do not adhere to the terms and conditions of these REC Rules, or that do not fulfill all requirements set forth in Article IV and Article V of this RFP, or that are not submitted in accordance with the process of Article VI, will not be considered.
- III.1.8. The submission of a Part 1 or a Part 2 Proposal to the Procurement Administrator constitutes the REC Bidder's acknowledgement and acceptance of all the terms and conditions of these REC Rules, regardless of the outcome of the RFP or the outcome of such Proposal.
- III.1.9. The REC Bidder, at its own cost and expense, shall defend ComEd, the Procurement Monitor, the Procurement Administrator and the IPA and their subsidiaries, affiliates, successors and assigns, and each and every one of their respective past, present, or future officers, directors, trustees, employees, shareholders, executors, administrators, successors and assigns, other than entities that are also REC Bidders, against any and all manner of past, present, or future claims, demands, disputes, controversies, complaints, suits, actions, proceedings, or allegations of any kind which in any manner relate to, arise out of, or result from any false statement in the Proposal or breach of any covenant by the REC Bidder set forth herein. The REC Bidder shall indemnify and hold harmless ComEd, the Procurement Monitor, the

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Procurement Administrator and the IPA, their parent companies, subsidiaries, affiliates, successors and assigns, and each and every one of their respective past, present, or future officers, directors, trustees, employees, shareholders and agents, as well as the heirs, executors, administrators, successors and assigns, other than entities that are REC Bidders, against any and all liens, judgments, liabilities, losses, injuries, damages, fees, fines, costs or expenses which in any manner relate to, arise out of, or result from any false statement or misrepresentation in the Proposal or breach of any warranty by the REC Bidder as set forth herein.

## ARTICLE IV. Part 1 Proposal Requirements

### IV.1. Contact Information and Representations

- IV.1.1. A REC Bidder must submit the following contact information in its Part 1 Proposal: (i) the REC Bidder's legal name and address; (ii) the name, title, and full contact information (address, phone number, fax number, email address) of an Officer of the REC Bidder; (iii) the name, title, and full contact information (address, phone numbers, fax number, email address) of an individual named by the Officer of the REC Bidder who will serve as Representative of the REC Bidder for purposes of this RFP.
- IV.1.2. The Officer of the REC Bidder must be an officer, a director or an individual otherwise empowered to undertake contracts and bind the REC Bidder. The Officer of the REC Bidder whose contact information is provided in the Part 1 Proposal must make all representations required in the Part 1 Proposal and, should the REC Bidder submit a Part 2 Proposal, must be the individual who signs the REC Master Agreement.
- IV.1.3. In the Part 1 Proposal, the Officer of the REC Bidder must name a Representative of the REC Bidder. The Officer of the REC Bidder may name himself or herself as the Representative. The Representative is the point of contact if the Procurement Administrator has questions on the documentation provided by the REC Bidder in response to this RFP or requires additional information. The Procurement Administrator sends all correspondence related to the procurement event to the Representative, including confidential information required to submit bids on the Bid Date. The Procurement Administrator, for the purposes of this RFP, will communicate exclusively with the Representative or the Officer. Communications with the Representative will typically be done via fax and by overnight delivery so that the REC Bidder is urged to provide a fax number at which the Representative will

be able to receive faxes from the Procurement Administrator in a secure and timely manner.

IV.1.4. The Officer of the REC Bidder must certify that the Part 1 Proposal will remain in full force and effect until ~~eight (8)~~seven (7) business days after the Bid Date.

IV.1.5. The Officer of the REC Bidder must certify that all information provided in the Part 1 Proposal is true and accurate to the best of the Officer's knowledge and belief.

IV.1.6. The Officer of the REC Bidder must certify that if, for any reason and due to any circumstance, any information provided in the Part 1 Proposal changes before the Bid Date, the Officer of the REC Bidder or the Representative will notify the Procurement Administrator of such changes as soon as practicable.

IV.1.7. All information and certifications in this Section IV.1 must be provided exclusively by completing Section 1 of the Part 1 Form, as further explained in Article VI.

## IV.2. Financial Requirements

IV.2.1. A REC Bidder must, in its Part 2 Proposal, submit a Pre-Bid Letter of Credit in the form of the Standard Pre-Bid Letter of Credit in an amount of ~~\$5~~\$2 times the number of RECs that the REC Bidder is bidding across all Products. The Standard Pre-Bid Letter of Credit is provided as Appendix 6 of these REC Rules. A REC Bidder may, in its Part 1 Proposal, request modifications to the Standard Pre-Bid Letter of Credit that are non-material in nature, or that clarify the intent of the Standard Pre-Bid Letter of Credit, or that make modifications advantageous to both ComEd and the REC Bidder. A REC Bidder requests modifications to the Standard Pre-Bid Letter of Credit by submitting a Draft Pre-Bid Letter of Credit substantially in the form of the Standard Pre-Bid Letter of Credit indicating clearly any and all modifications from the Standard Pre-Bid Letter of Credit. The Draft Pre-Bid Letter of Credit must be submitted electronically, in Microsoft Word with tracked changes. The Draft Pre-Bid Letter of Credit must be transmitted to the Procurement Administrator in one of the following two ways. The Draft Pre-Bid Letter of Credit may be saved to a CD that is

included with the Part 1 Proposal. Alternatively, the Draft Pre-Bid Letter of Credit may be e-mailed to the Procurement Administrator at [pa@comed-energyrfp.com](mailto:pa@comed-energyrfp.com). A Draft Pre-Bid Letter of Credit that is not substantially in the form of the Standard Pre-Bid Letter of Credit will not be considered or evaluated.

IV.2.2. All approved modifications to the Standard Pre-Bid Letter of Credit will be posted to the RFP Web site. Each REC Bidder may use any of the approved modifications, regardless of whether the REC Bidder itself or another REC Bidder proposed the modification.

IV.2.3. The REC Master Agreement includes, as Schedule 1 to the Collateral Annex, a standard Irrevocable Standby Letter of Credit that may be used to post security under the terms of the REC Master Agreement. The alternative to this letter of credit is the posting of cash as security. This paragraph refers to this letter of credit as the Standard Post-Bid Letter of Credit. A REC Bidder may, in its Part 1 Proposal, request modifications to the Standard Post-Bid Letter of Credit that are non-material in nature, or that clarify the intent of the Standard Post-Bid Letter of Credit, or that make modifications advantageous to both ComEd and the REC Bidder. A REC Bidder requests modifications to the Standard Post-Bid Letter of Credit by submitting a Draft Post-Bid Letter of Credit substantially in the form of the Standard Post-Bid Letter of Credit indicating clearly any and all modifications from the Standard Post-Bid Letter of Credit. The Draft Post-Bid Letter of Credit must be submitted electronically, in Microsoft Word with tracked changes, ~~and must be~~. The Draft Post-Bid Letter of Credit may be saved to a CD that is included with the Part 1 Proposal, or it may be e-mailed to the Procurement Administrator at [pa@comed-energyrfp.com](mailto:pa@comed-energyrfp.com). A Draft Post-Bid Letter of Credit that is not substantially in the form of the Standard Post-Bid Letter of Credit will not be considered or evaluated.

IV.2.4. All approved modifications to the Standard Post-Bid Letter of Credit will be posted to the RFP Web site. Each REC Bidder may use any of the approved modifications,

regardless of whether the REC Bidder itself or another REC Bidder proposed the modification.

IV.2.5. The Officer of the REC Bidder must certify that the REC Bidder has no pending legal proceedings or, to its knowledge, threatened legal proceedings against it or any of its affiliates that could materially adversely affect its ability to perform its obligations under the REC Master Agreement and each Confirmation.

IV.2.6. All information and certifications in this Section IV.2 must be provided exclusively by completing Section 2 of the Part 1 Form, as further explained in Article VI.

### **IV.3. Regulatory Representations**

IV.3.1. The Officer of the REC Bidder must, in the Part 1 Proposal, certify that the REC Bidder has obtained all governmental and other authorizations, approvals, consents, notices and filings required to enter into and perform the REC Master Agreement.

IV.3.2. The Officer of the REC Bidder must, in the Part 1 Proposal, certify either: that the REC Bidder has an existing PJM EIS GATS and/or MRETS account; or: that the REC Bidder has no impediment to obtaining an account in PJM EIS GATS or an MRETS account by August 1, 2009.

IV.3.3. The certifications in this Section IV.3 must be provided exclusively by completing Section 3 of the Part 1 Form, as further explained in Article VI.

### **IV.4. Additional Representations**

IV.4.1. The Officer of the REC Bidder must, in the Part 1 Proposal, certify that he/she has read the REC Master Agreement and that the REC Bidder accepts all of the terms of the REC Master Agreement without modifications.

IV.4.2. The Officer of the REC Bidder must acknowledge that the submission of the Part 1 Proposal constitutes the REC Bidder's acceptance of all the terms and conditions of these REC Rules, regardless of the outcome of the RFP or the outcome of such Proposal.

IV.4.3. The Officer of the REC Bidder must, in its Part 1 Proposal, certify that the REC Bidder is not part of a bidding agreement, a joint venture for purposes of participating in the RFP, a bidding consortium, or any other type of agreement related to bidding in this RFP. A REC Bidder found to be acting in concert with another REC Bidder will be disqualified by the Procurement Administrator.

IV.4.4. The certifications in this Section IV.4 must be provided exclusively by completing Section 4 of the Part 1 Form, as further explained in Article VI.

#### IV.5. Bid Participation Fee

IV.5.1. A REC Bidder must, with its Part 1 Proposal, pay a Bid Participation Fee of ~~\$1,000~~250 that will be used to cover part of the costs of the procurement event. The Supplier Fee, which is levied on winning REC Bidders only, also is used to cover part of the costs of the procurement event. The Bid Participation Fee will not be paid back under any circumstances.

IV.5.2. The Bid Participation Fee must be submitted by certified check or by wire transfer to the Procurement Administrator by the Part 1 Date.

IV.5.3. If the ~~Bid Participation Fee is provided by wire transfer and if~~REC Bidder submits the Bid Participation Fee ~~is not received in full when the Part 1 Form is received, the~~by wire transfer, the REC Bidder must provide: i) the name of the bank from which the wire transfer will originate; and ii) the entity and account from which the wire transfer originates; ~~iii). If the Procurement Administrator has not received the wire transfer when the Part 1 Form is received, the Procurement Administrator may require~~ documentation showing that the wire transfer has been requested ~~and is being processed.~~

IV.5.4. Information requested in this Section IV.4 of the REC Rules must be provided exclusively by completing Section 4 of the Part 1 Form, as further explained in Article VI.

#### IV.6. REC Bidders Under an Agency Agreement

IV.6.1. A REC Bidder submitting a Proposal under an agency authorization (“Agency Agreement”) must comply with additional requirements in its Part 1 Proposal. This Section details those additional requirements. The requirements of this Section IV.5 apply only to REC Bidders submitting a Proposal under an Agency Agreement; other REC Bidders are not subject to the requirements of this Section IV.5.

IV.6.2. A REC Bidder submitting a Proposal under an Agency Agreement must identify the Principal or Principals to the Agency Agreement.

IV.6.3. A REC Bidder that is applying under an Agency Agreement must provide ~~a~~one (1) copy of its Agency Agreement with its Part 1 Proposal, either in hard copy or electronically on a CD.

IV.6.4. The Officer of the REC Bidder must certify that it has the authority to bind the Principal(s).

IV.6.5. The Officer of the REC Bidder must acknowledge that an Officers’ Certificate, substantially in the form of Appendix 7 to these REC Rules and signed by an officer of each Principal, must be provided with the Part 2 Proposal.- This Officers’ Certificate will state that: (i) the copy of the Agency Agreement submitted with the Part 1 Proposal is a true and complete copy of the Agency Agreement as currently in effect; (ii) the Agency Agreement is in full force and effect and shall remain in full force and effect for a period extending to ~~eight (8)~~seven (7) business days following the Bid Date; (iii) there are no proceedings pending for the amendment or termination of the Agency Agreement; (iv) each individual who has executed the Officers’ Certificate, the Agency Agreement, and the REC Master Agreement submitted with the Part 2 Proposal is (or was at the time of the execution of such documents) authorized to execute and deliver such documents on behalf of the Principal(s); and (v) the Officer of the REC Bidder is authorized to execute any Confirmations pursuant to the REC

Master Agreement on behalf of the Principals. A REC Bidder may, but is not required to, submit with its Part 1 Proposal a draft Officers' Certificate for evaluation. If a REC Bidder submits a draft Officers' Certificate for evaluation, the Procurement Administrator will inform the REC Bidder of any changes required to the Officers' Certificate in its Notification of Qualification.

IV.6.6. The information required by this Section IV.6 must be provided exclusively by completing Section 6 of the Part 1 Form, as further explained in Article VI.

#### IV.7. Elections

IV.7.1. Each ~~RFP~~REC Bidder must duly complete the Supplement to the Part 1 Form ("Supplement") and include it with its Part 1 Proposal. The response to the Supplement is used to prepare the REC Master Agreement that will be sent to the ~~RFP~~REC Bidder with its Notification of Qualification and that the ~~RFP~~REC Bidder must present with its Part 2 Proposal.

IV.7.2. Using the Supplement, each ~~RFP~~REC Bidder must, with its Part 1 Proposal, make any possible elections for the REC Master Agreement and provide all contact information necessary for execution of the REC Master Agreement.

~~IV.7.3. Using the Supplement, each RFP Bidder must, with its Part 1 Proposal, make any possible elections for the Guaranty and provide all contact information necessary for execution of the Guaranty.~~

~~IV.7.4.~~

## ARTICLE V. Part 2 Proposal Requirements

### V.1. Contact Information and Representations

- V.1.1. A REC Bidder submits contact information in its Part 1 Proposal. The Procurement Administrator provides, along with the Notification of Qualification, a record of the contact information contained in the Part 1 Proposal. A REC Bidder must confirm in its Part 2 Proposal that the record of the contact information is correct. If it is not correct, the REC Bidder must provide corrected contact information, including any or all of the following: (i) the REC Bidder's legal name and address; (ii) the name and title of the Officer of the REC Bidder making the certifications and representations of the Part 2 Proposal; (iii) the name of the Representative of the REC Bidder; and (iv) the phone numbers, fax number, and email address for the Representative.
- V.1.2. The Officer of the REC Bidder must certify that the Part 2 Proposal will remain in full force and effect, ~~unless otherwise specified,~~ until ~~eight (8)~~ seven (7) business days after the Bid Date.
- V.1.3. The Officer of the REC Bidder must certify that all information provided in the Part 2 Proposal is true and accurate to the best of the Officer's knowledge and belief.
- V.1.4. The Officer of the REC Bidder must certify that the REC Bidder is bidding independently and that it has no knowledge of any Proposal being submitted for this procurement event by another REC Bidder in response to this RFP.
- V.1.5. The Officer of the REC Bidder must certify that the REC Bidder has maintained and will continue to maintain the confidentiality of its Proposal during the preparation of the Proposal, including in communicating with its financial institution for the purpose of preparing the Pre-Bid Letter of Credit or in communicating with advisors, if any.
- V.1.6. The Officer of the REC Bidder must certify that, with only the exceptions noted in Paragraph V.1.5, the REC Bidder has not disclosed, and will not otherwise disclose,

publicly or to any other party any information relating to its Proposal, which could have an effect on whether another party submits a Proposal to this RFP, or on the contents of such Proposal that another REC Bidder would be willing to submit in response to the RFP. Such information includes, but is not limited to: the fact that the REC Bidder is submitting a Proposal in response to this RFP; the REC Bidder's Bids; the REC Bidder's number of RECs bid of any Product; the REC Bidder's estimation of the value of REC of a Product; the REC Bidder's estimation of the risks associated with providing RECs under the REC Master Agreement; and the REC Bidder's preference for bidding on specific Products. This certification must hold until the ICC has rendered its decision on the results of the procurement event of REC.

V.1.7. The Act states that the names of successful REC Bidders and the average of the winning bid prices for each Product will be made public at the time of ICC approval of a procurement event. The Act also states that participants in the procurement process will maintain the confidentiality of all other supplier and bidding information. The Part 2 Form will remind REC Bidders of this provision.

V.1.8. The Officer of the REC Bidder must certify that any Bid on any Product submitted in response to this RFP is binding until ~~eight (8)~~seven (7) business days after the Bid Date. Each Bid constitutes a binding and irrevocable offer to supply a REC of a Product at the Bid price indicated and under the terms of the REC Master Agreement submitted with the Part 2 Proposal. The Officer of the REC Bidder must certify that if the ICC approves some or all of the REC Bidder's Bids, a binding and enforceable obligation arises under the terms of the REC Master Agreement provided with the Part 2 Proposal to execute a Confirmation to deliver RECs to ComEd during the period June 1, 2009 to May 31, 2009 for each Product for which the REC Bidder's Bids are approved by the ICC. For each Product, the price paid to the REC Bidder is the average of the REC Bidder's own winning Bids for all RECs of that Product.

V.1.9. ~~The Officer of the REC Bidder must acknowledge that, if~~ the ICC approves some or all of the REC Bidder's Bids, within one (1) business day of the ICC decision approving the results, ComEd will send electronically to the Officer of the REC Bidder ~~each applicable unexecuted Confirmation for each Product for which.~~ The Officer of the REC Bidder ~~has Bids approved by the ICC, and must acknowledge that~~ the REC Bidder will have ~~one (1) until 1 PM CPT (2 PM Eastern Prevailing Time) on the next~~ business day after receipt to execute ~~and return all Confirmations to ComEd by fax or other~~ two (2) originals of each Confirmation and to return by facsimile or electronic means to ComEd one (1) original of each executed Confirmation, with ~~originals one (1) original of each executed Confirmation~~ to follow by overnight delivery to ComEd.

V.1.10. The Officer of the REC Bidder must certify that, if the ICC approves some or all of the REC Bidder's Bids, the REC Bidder will comply with the creditworthiness requirements of the REC Master Agreement within three (3) business days of the ICC decision to approve the results of the procurement event.

V.1.11. The information required by this Section V.1 must be provided exclusively by completing Section 1 of the Part 2 Form, as further explained in Article VI.

## V.2. Pre-Bid Letter of Credit

V.2.1. The REC Bidder must provide an executed Pre-Bid Letter of Credit, drawn for the account of the REC Bidder. The REC Bidder must either use the Standard Pre-Bid Letter of Credit provided in Appendix 6 to these REC Rules, or the REC Bidder must submit a Pre-Bid Letter of Credit that incorporates only those modifications to the Standard Pre-Bid Letter of Credit accepted as a result of the evaluation of Part 1 Proposals. All approved modifications will be posted to the RFP Web site. A REC Bidder may use any of the approved modifications, regardless of whether the REC Bidder itself or another REC Bidder proposed the modification. The REC Bidder cannot propose or incorporate any modification to its Pre-Bid Letter of Credit other than the modifications approved and posted as such on the RFP Web site. If the Pre-

Bid Letter of Credit incorporates or proposes modifications other than those approved and posted as such on the RFP Web site, the Pre-Bid Letter of Credit will be non-compliant and the Part 2 Proposal will be automatically considered deficient.

V.2.2. The Pre-Bid Letter of Credit must be in an amount no less than \$52 times the number of RECs for which the REC Bidder is placing a Bid across all Products.

V.2.3. Payment under the Pre-Bid Letter of Credit can be demanded by ComEd if: (i) the REC Bidder has made a material omission or misrepresentation in its Part 1 Proposal or in its Part 2 Proposal; (ii) the REC Bidder discloses information relating to its Proposal publicly or to any other party before the ICC has rendered its decision on the results of the procurement event; or (iii) the ICC approves some or all of the REC Bidder's Bids and the REC Bidder fails to execute all Confirmations in the timeframe required by the REC Master Agreement.

V.2.4. ComEd will release the Pre-Bid Letter of Credit no later than nineeight (8) business days after the Bid Date. A REC Bidder may, in Section 2 of the Part 2 Form, provide special instructions for the return of the Pre-Bid Letter of Credit. If the ICC does not approve any of a particular REC Bidder's Bids, ComEd will release that REC Bidder's Pre-Bid Letter of Credit within one (1) business day of the ICC decision.

V.2.5. The confirmation by the Officer of the REC Bidder that the Pre-Bid Letter of Credit is included with the Part 2 Proposal must be provided exclusively by completing Section 2 of the Part 2 Form, as further explained in Article VI.

### **V.3. REC Master Agreement**

V.3.1. With the Notification of Qualification, the Procurement Administrator sends the REC Master Agreement to each REC Bidder that qualified pursuant to a successful Part 1 Proposal. The REC Master Agreement is provided electronically on a CD. The Officer of the REC Bidder must print two (2) originals of the REC Master Agreement, must execute each of the two (2) signature pages, and must return these two (2) signature pages with the REC Bidder's Part 2 Proposal. For the avoidance of doubt, the Officer

of the REC Bidder executing the signatures pages of the two (2) originals of the REC Master Agreement is the Officer designated in the Part 1 Proposal and whose contact information is confirmed in the Part 2 Proposal.

V.3.2. If the REC Bidder is applying under an Agency Agreement, the REC Bidder must submit an Officers' Certificate, substantially in the form of Appendix 7 to these REC Rules and signed by an officer of each Principal. This Officers' Certificate states that: (i) the copy of the Agency Agreement submitted with the Part 1 Proposal is a true and complete copy of the Agency Agreement as currently in effect; (ii) the Agency Agreement is in full force and effect and shall remain in full force and effect for a period extending to ~~eight (8)~~ seven (7) business days following the Bid Date; (iii) there are no proceedings pending for the amendment or termination of the Agency Agreement; (iv) each individual who has executed the Officers' Certificate, the Agency Agreement, and the REC Master Agreement submitted with the Part 2 Proposal is (or was at the time of the execution of such documents) authorized to execute and deliver such documents on behalf of the Principal(s); and (v) the Officer of the REC Bidder is authorized to execute any Confirmations pursuant to the REC Master Agreement on behalf of the Principals. If no representatives of the REC Bidder are authorized to execute Confirmations pursuant to the REC Master Agreement, the REC Bidder must name a representative of a Principal that is so authorized. This individual must also execute the two (2) originals of the signature pages of the REC Master Agreement submitted with the Part 2 Proposal.

V.3.3. The confirmation by the Officer of the REC Bidder that all REC Master Agreement documents required by this Section V.3 are included with the Part 2 Proposal must be provided exclusively by completing Section 3 of the Part 2 Form, as further explained in Article VI.

#### V.4. Bids

- V.4.1. A Bid is a price for one REC of a Product, in dollars and rounded to the nearest cent. The Bid is the price that the REC Bidder is willing to accept to deliver a REC of that Product.
- V.4.2. A REC is a Standard REC and represents all environmental attributes for 1 MWh of energy from a renewable source. A REC Bidder cannot submit a Bid for less than a REC of a Product. The REC Bidder cannot bid on fractions, portions, or parts of RECs. Such Bids will be automatically rejected.
- V.4.3. A Bid that is not expressed in dollars will automatically be rejected.
- V.4.4. A REC Bidder may bid on any number of Products and may bid on all Products. For each Product, a REC Bidder may bid on any number of RECs up to and including the Target.
- V.4.5. A REC may specify that a Bid applies to a given quantity of RECs for a Product. The REC Bidder may not submit any additional instructions, contingencies, or conditions on their Bids. Any such additional instructions, contingencies, or conditions will be ignored.
- V.4.6. To be sufficient to support the REC Bidder's Bids, the Pre-Bid Letter of Credit must be in an amount no less than ~~\$5-2~~ for each REC on which a Bid is placed across all Products, up to a maximum of ~~\$7,821,800-3,128,720~~. If the Pre-Bid Letter of Credit is insufficient to support the REC Bidder's Bids, the Procurement Administrator will determine the number of RECs that the Pre-Bid Letter of Credit can support. The Procurement Administrator will remove Bids to ensure that the Pre-Bid Letter of Credit is sufficient. If possible, the Procurement Administrator will remove all necessary Bids from the Non-Wind Other State Product, removing the highest Bids first. If, after removing all Bids from the Non-Wind Other State Product, the Pre-Bid Letter of Credit is still insufficient to support the remaining REC Bidder's Bids, the Procurement Administrator will remove any necessary Bids from the Non-Wind Adjoining State Product, removing the highest Bids first. If, after removing all Bids

from the Non-Wind Other State Product and all Bids from the Non-Wind Adjoining State Product, the Pre-Bid Letter of Credit is still insufficient to support the remaining REC Bidder's Bids, the Procurement Administrator will remove any necessary Bids from the Non-Wind Illinois Product, removing the highest Bids first. If, after removing all Bids from all three (3) Non-Wind Products, the Pre-Bid Letter of Credit is still insufficient to support the remaining REC Bidder's Bids, the Procurement Administrator will remove any necessary Bids from the Wind Other State Product, removing the highest Bids first. If, after removing all Bids from all three (3) Non-Wind Products and from the Wind Other State Product, the Pre-Bid Letter of Credit is still insufficient to support the remaining REC Bidder's Bids, the Procurement Administrator will remove any necessary Bids from the Wind Adjoining State Product, removing the highest Bids first. If the Pre-Bid Letter of Credit remains insufficient to support the remaining REC Bidder's Bids, the Procurement Administrator will remove any necessary Bids from the Wind Illinois Product, removing the highest Bids first. The Officer of the REC Bidder must, in the Part 2 Form, agree that the Procurement Administrator may modify the REC Bidder's Bids as described in this paragraph should the amount of the Pre-Bid Letter of Credit be insufficient to support the REC Bidder's Bids.

- V.4.7. With the Notification of Qualification, the Procurement Administrator sends by overnight delivery the Bid Form to each REC Bidder qualified pursuant to a successful Part 1 Proposal. The Bid Form is provided electronically on a CD. At the same time, the Procurement Administrator sends to each REC Bidder instructions for completion of the Bid Form, for encryption of the Bid Form, and for electronic transfer of the completed Bid Form to the Procurement Administrator, as well as instructions for fax submission of the Bids in case of technical difficulties with the electronic transfer. These instructions will contain a username, password, and security codes unique to each REC Bidder that will allow the Procurement Administrator to authenticate the

Bids received. The Officer of the REC Bidder must, in the Part 2 Form, confirm that the username, password, and security codes were received intact and that no one but authorized personnel of the REC Bidder has had access to this information.

V.4.8. The exclusive method for submitting a REC Bidder's Bids is the Bid Form. A REC Bidder must fill out all required information on the Bid Form according to the instructions provided by the Procurement Administrator with its Notification of Qualification. A REC Bidder must encrypt its Bid Form and submit the Bid Form to the Procurement Administrator through a secure electronic transfer according to the instructions provided by the Procurement Administrator with its Notification of Qualification. A REC Bidder must fill out contact information on its Bid Form and the Procurement Administrator will use that information to confirm receipt of the Bids.

V.4.9. Only in case of technical difficulties, a REC Bidder may print the Bid Form and fax it to the Procurement Administrator instead of using the secure electronic transfer. The Procurement Administrator will provide instructions for such a contingency. These instructions will include the Officer of the REC Bidder or the Representative phoning the Procurement Administrator to advise the Procurement Administrator of the use of a fax transmission and to provide authenticating information, and a representative of the ~~RFP~~REC Bidder confirming each and every Bid by phone.

V.4.10. All Bid Forms must be received between 9 AM and 12 PM (noon) (CPT) on the Bid Date. No late Bid Forms will be accepted regardless of the method used by the REC Bidder to submit its Bid Form.

V.4.11. The Officer of the REC Bidder must provide the certifications required in this Section V.4 exclusively by completing Section 4 of the Part 2 Form, as further explained in Article VI.

## ARTICLE VI. Process

### VI.1. Part 1 and Part 2 Proposals: Submission and Processing

VI.1.1. The Procurement Administrator, for the purposes of this RFP, will communicate exclusively with the Representative or the Officer of the REC Bidder. Any notification or other written communication given by the Procurement Administrator to a REC Bidder will be sent by overnight delivery at the address provided for the Representative or sent by fax at the fax number provided for the Representative. Any such notification or communication will be deemed received by the REC Bidder at the time of delivery or transmission, provided that where delivery of transmission occurs after 6 PM on a business day or occurs on a day that is not a business day, receipt will be deemed to occur at 9 AM on the following business day. The REC Bidder is urged to provide a fax number at which the Representative will be able to receive faxes from the Procurement Administrator in a secure and timely manner.

VI.1.2. The exclusive method of responding to the qualification standards listed in Article IV of these REC Rules is the use of the Part 1 Form provided as Appendix 2 of these REC Rules and the use of the Supplement to the Part 1 Form posted to the RFP Web site. A REC Bidder must provide the contact information and general representations required by Section IV.1, including information regarding the Officer of the REC Bidder and the Representative, exclusively by completing Section 1 of the Part 1 Form. A REC Bidder must show compliance with the financial requirements of Section IV.2 exclusively by completing Section 2 of the Part 1 Form and by providing all documents supporting the financial information and credit information requested in that Section. The Officer of the REC Bidder must certify, as required by Section IV.3, that the REC Bidder has all regulatory authorizations necessary for it to legally perform its obligations under the REC Master Agreement and the Confirmations

exclusively by completing Section 3 of the Part 1 Form. A REC Bidder must make additional representations, including acceptance of all the terms of the REC Master Agreement without modifications, exclusively by completing Section 4 of the Part 1 Form. A REC Bidder must provide the details of how it pays the Bid Participation Fee exclusively by completing Section 5 of the Part 1 Form. A REC Bidder submitting a Proposal under an Agency Agreement must provide additional information, including acknowledging that an Officers' Certificate must be provided with the Part 2 Proposal, exclusively by completing Section 6 of the Part 1 Form. A REC Bidder must make any possible elections for the REC Master Agreement and provide all contact information necessary for execution of the REC Master Agreement exclusively by completing the Supplement to the Part 1 Form. Responses to the qualification standards of Article IV that do not use the Part 1 Form will not be considered and the Part 1 Proposal will be considered deficient.

VI.1.2-VI.1.3. The Part 1 Proposal consists of three (3) original Part 1 Forms and one (1) copy of all documents requested in the Part 1 Form and in Article IV of these REC Rules, including the Supplement to the Part 1 Form. Section IV provides all instructions on whether a given document may be provided in hard copy, electronically on a CD, or electronically via email.

VI.1.3-VI.1.4. A REC Bidder must deliver its Part 1 Proposal by certified mail, registered mail, hand delivery or overnight delivery to the Procurement Administrator by noon on the Part 1 Date at the following address: Procurement Administrator, ComEd Procurement, [address]-222 South Riverside Plaza, 29th Floor, Chicago, IL 60606-5808. All times in this RFP are Central Prevailing Times unless specifically noted. Photocopies and facsimiles of the Part 1 Form will not be considered. No late Part 1 Proposals will be accepted under any circumstances.

VI.1.4-VI.1.5. The Procurement Administrator receives and processes the Part 1 Proposals during the Part 1 Proposal Window, which extends from 8 AM on April 15,

2009 to noon on the Part 1 Date, which is April 22, 2009. If a Part 1 Proposal is received by post, the Procurement Administrator faxes a confirmation to the REC Bidder consisting of a photocopy of the first page of the Part 1 Form stamped with the time and the date that it was received. If a Part 1 Proposal is hand-delivered, the Procurement Administrator provides a confirmation consisting of a photocopy of the first page of the Part 1 Form stamped with the time and the date that it was received. The Procurement Administrator confirms receipt whether or not the Part 1 Proposal arrives during the Part 1 Window; however, Part 1 Proposals are only processed during the Part 1 Window.

~~VI.1.5-VI.1.6.~~ If the Part 1 Proposal arrives before noon on any day during the Part 1 Window, the Procurement Administrator sends the confirmation of receipt on the day the Part 1 Proposal is received with the results of an initial review. The initial review states either that the Part 1 Proposal is complete and is being considered, or the initial review lists items of the Part 1 Proposal that are deficient or require clarification. If a Part 1 Proposal arrives after noon on any day during the Part 1 Window prior to the Part 1 Date, the Procurement Administrator sends the confirmation of receipt along with the initial review by noon of the next business day.

~~VI.1.6-VI.1.7.~~ A REC Bidder that submits a Draft Pre-Bid Letter of Credit will receive a review of any proposed modifications within two (2) business days. The REC Bidder can only submit a single Draft Pre-Bid Letter of Credit. Any review communicated to the REC Bidder of the Draft Pre-Bid Letter of Credit is final and without appeal. All modifications accepted to the Pre-Bid Letter of Credit for the benefit of a single REC Bidder will be made available to all REC Bidders on an optional basis. All such modifications will be posted in a single document on the RFP Web site that will be updated daily during the Part 1 Window. By noon on the day the Part 2 Window opens, the final document containing all accepted modifications will be posted to the Web site.

~~VI.1.7-VI.1.8.~~ A REC Bidder that submits a Draft Post-Bid Letter of Credit will receive a review of any proposed modifications within seven (7) business days but in no event later than the Part 2 Date. The REC Bidder can only submit a single Draft Post-Bid Letter of Credit. Any review communicated to the REC Bidder of the Draft Post-Bid Letter of Credit is final and without appeal. All modifications accepted to the Standard Post-Bid Letter of Credit for the benefit of a single REC Bidder will be made available to all REC Bidders on an optional basis. All such modifications will be posted in a single document on the RFP Web site that will be posted no later than 6 PM on the Part 2 Date.

~~VI.1.8-VI.1.9.~~ A REC Bidder applying under an Agency Agreement that submits a Draft Officers' Certificate will receive a review of the document within two (2) business days. Any review communicated to the REC Bidder of the Draft Officers' Certificate is final and without appeal.

~~VI.1.9-VI.1.10.~~ If a REC Bidder receives any notice from the Procurement Administrator that any item of the Part 1 Proposal is deficient or requires clarification, the REC Bidder has until noon on the Part 1 Date, or until 6:00 PM on the business day following the business day during which such a notice is faxed to the REC Bidder, whichever comes later, to respond. If the REC Bidder does not correct or adequately explain the deficiency within the time allowed, the Part 1 Proposal may be rejected.

~~VI.1.10-VI.1.11.~~ With its Part 1 Proposal, each REC Bidder must, by using the Supplement, make any possible elections for the REC Master Agreement and provide all contact information necessary for execution of the REC Master Agreement. The REC Bidder's response will be used to prepare the original REC Master Agreement that will be sent to the REC Bidder with its Notification of Qualification.

~~VI.1.11-VI.1.12.~~ A REC Bidder is qualified to submit a Part 2 Proposal if its Part 1 Proposal is received on or before noon on the Part 1 Date, if its Part 1 Proposal is

complete, and if its Part 1 Proposal fully complies with the qualification standards of Article IV of these REC Rules. If a REC Bidder receives a notice from the Procurement Administrator that the Part 1 Proposal is deficient or requires clarification, and if the REC Bidder does not respond, the REC Bidder will not be qualified. A REC Bidder that submits a Part 1 Proposal will be notified whether it has qualified to submit a Part 2 Proposal for the RFP no later than 6 PM on April 27, 2009.

~~VI.1.12-VI.1.13.~~ If a REC Bidder fails to qualify, the Procurement Administrator notifies the REC Bidder of that fact by fax and by overnight delivery. The Procurement Administrator returns one (1) copy of the Part 1 Form by overnight delivery.

~~VI.1.13-VI.1.14.~~ If a REC Bidder qualifies, the Procurement Administrator sends by fax and by overnight delivery a Notification of Qualification to the REC Bidder. The Procurement Administrator sends by overnight delivery, with the Notification of Qualification: (i) a CD to which are saved the REC Master Agreement and the Bid Form; (ii) instructions for filling out and encrypting the Bid Form; (iii) instructions for the electronic transfer of the completed Bid Form from the REC Bidder to the Procurement Administrator; (iv) instructions for fax submission of the Bids in case of technical difficulties with the electronic transfer; (v) invitation to a training session on the bid submission process; (vi) a sealed envelope containing a username, a password, and security codes to be used for bid submission uniquely by that REC Bidder.

~~VI.1.1-VI.1.15.~~ Except for submission of Bids, the exclusive method of responding to the requirements listed in Article V of these REC Rules is the use of the Part 2 Form provided as Appendix 3 of these REC Rules. A REC Bidder must confirm its contact information and make general representations required by Section ~~IV.1V.1~~, including certifying that its Bids will remain binding until ~~eight (8)~~seven (7) business days after the Bid Date, exclusively by completing Section 1 of the Part 2 Form. A REC Bidder

must confirm that it is submitting the Pre-Bid Letter of Credit exclusively by completing Section 2 of the Part 2 Form. A REC Bidder must confirm that it is submitting all documents related to the REC Master Agreement, duly executed, exclusively by completing Section 3 of the Part 2 Form. A REC Bidder must verify that it has received intact the information necessary for the submission of Bids (including the username, password, and security codes) and that the security of this information has been maintained exclusively by completing Section 4 of the Part 2 Form. Responses to the requirements of Article V that do not use the Part 2 Form will not be considered and the Part 2 Proposal will be considered deficient.

~~VI.1.15-VI.1.16.~~ The Bid Form, as provided to each REC Bidder upon qualification, is the exclusive method for the submission of Bids. A sample of the Bid Form is provided for illustrative purposes as Appendix 4 of these REC Rules. The Bid Form must be filled out completely, encrypted, and transferred according to the instructions provided by the Procurement Administrator. Bids on any Bid Form that is incompletely or inconsistently filled out will be considered deficient and will not be evaluated.

~~VI.1.16-VI.1.17.~~ The Part 2 Proposal (excluding the Bids) consists of three (3) original Part 2 Forms, the Pre-Bid Letter of Credit, two (2) executed signature pages from the REC Master Agreement, and one (1) hard copy of any other document requested of the REC Bidder in the Part 2 Form and in Article V of these REC Rules. An RFP submitting a Proposal under an Agency Agreement must provide an executed Officers' Certificate.

~~VI.1.17-VI.1.18.~~ A REC Bidder must deliver its Part 2 Proposal (excluding the Bids) by certified mail, registered mail, hand delivery or overnight delivery to the Procurement Administrator by noon on the Part 2 Date at the following address: Procurement Administrator, ComEd Procurement, ~~[address]~~ 222 South Riverside Plaza, 29th Floor, Chicago, IL 60606-5808. The Part 2 Date is the last day of the Part

2 Proposal Window. A REC Bidder must submit its Bids in accordance with the instructions received from the Procurement Administrator with its Notification of Qualification and in accordance with the requirements of Section VI.2 between 9 AM and noon on the Bid Date. All times in this RFP are Central Prevailing Times unless specifically noted. Photocopies and facsimiles of the Part 2 Form will not be considered. No late Part 2 Proposals will be accepted under any circumstances.

~~VI.1.18-VI.1.19.~~ If a Part 2 Proposal (excluding the Bids) is received by post, the Procurement Administrator faxes a confirmation to the REC Bidder consisting of a photocopy of the first page of the Part 2 Form stamped with the time and the date that it was received. If a Part 2 Proposal is hand-delivered, the Procurement Administrator provides a confirmation consisting of a photocopy of the first page of the Part 2 Form stamped with the time and the date that it was received. The Procurement Administrator confirms receipt whether or not the Part 2 Proposal arrives during the Part 2 Window; however, Part 2 Proposals are only processed during the Part 2 Window.

~~VI.1.19-VI.1.20.~~ If the Part 2 Proposal (excluding the Bids) arrives before noon on any day during the Part 2 Window, the Procurement Administrator sends the confirmation of receipt on the day the Part 2 Proposal is received with the results of an initial review. The initial review states either that the Part 2 Proposal is complete and is being considered, or the initial review lists items of the Part 2 Proposal that are deficient or require clarification. If a Part 2 Proposal arrives after noon on any day during the Part 2 Window prior to the Part 2 Date, the Procurement Administrator sends the confirmation of receipt along with the initial review by noon of the next business day.

~~VI.1.20-VI.1.21.~~ A REC Bidder's Part 2 Proposal (excluding the Bids) is automatically deficient if the Pre-Bid Letter of Credit proposes or includes modifications to the

Standard Pre-Bid Letter of Credit included as Appendix 6 of these REC Rules other than those accepted modifications posted in a single document on the RFP Web site.

~~VI.1.21-VI.1.22.~~ If a REC Bidder receives any notice from the Procurement Administrator that any item of the Part 2 Proposal (excluding the Bids) is deficient or requires clarification, the REC Bidder has until noon on the Part 2 Date, or until 6:00 PM on the business day following the business day during which such a notice is faxed to the REC Bidder, whichever comes later, to respond. In no event will the REC Bidder be allowed to respond after 3 PM on the Bid Date. If the REC Bidder does not correct or adequately explain the deficiency within the time allowed, the Part 2 Proposal may be rejected.

~~VI.1.22-VI.1.23.~~ A REC Bidder's Bids are evaluated if its Part 2 Proposal (excluding the Bids) is received on or before noon on the Part 2 Date, if its Part 2 Proposal is complete, if its Part 2 Proposal fully complies with the requirements of Article V of these REC Rules by 3 PM on the Bid Date, if its Bid Form is received between 9 AM and noon on the Bid Date, and if its Bid Form is submitted according to the instructions provided by the Procurement Administrator. Each REC Bidder that submits a Part 2 Proposal will be notified whether its Bids were evaluated ~~no later than 6~~ by 3 PM on the Bid Date.

~~VI.1.23-VI.1.24.~~ If a REC Bidder's Bids are not evaluated because its Part 2 Proposal fails to satisfy all requirements of Article V, the Procurement Administrator notifies the REC Bidder of that fact by fax and by overnight delivery. The Procurement Administrator returns one (1) copy of the Part 2 Form by overnight delivery.

~~VI.1.24-VI.1.25.~~ If a REC Bidder's Bids are evaluated, the Procurement Administrator notifies the REC Bidder of that fact by ~~fax and by courier by 6~~ 3 PM on the Bid Date. By 6 PM on the first business day after the Bid Date, the Procurement Administrator notifies a REC Bidder with Bids that were being evaluated whether any of the REC Bidder's Bids are being recommended for acceptance by the Procurement

Administrator. The Procurement Administrator identifies to a REC Bidder the number of RECs of each Product for which the REC Bidder's Bids are being recommended for acceptance, and identifies the Bid that is the price for each such REC. This notification occurs by telephone with a written confirmation by fax upon request by the ~~RFP~~REC Bidder.

## VI.2. Bid and Post-Bid Process

- VI.2.1. A REC Bidder submits its Bids electronically, by transferring an encrypted Bid Form through a secure file transfer interface. The REC Bidder must use a username and a password provided by the Procurement Administrator to access the secure interface. The REC Bidder must use a security code provided by the Procurement Administrator to encrypt the file.
- VI.2.2. A REC Bidder that must resort to submitting its Bid Form by fax because of technical difficulties must follow the instructions provided by the Procurement Administrator for this contingency. These instructions will include the Officer of the REC Bidder or the Representative phoning the Procurement Administrator to advise the Procurement Administrator of the use of a fax transmission to submit Bids and to provide authenticating information.
- VI.2.3. All Bid Forms must be received between 9 AM and noon (CPT) on the Bid Date. All times in this RFP are Central Prevailing Times unless specifically noted. No late Bid Forms will be considered regardless of the method used by the REC Bidder to submit its Bid Form.
- VI.2.4. The Procurement Administrator confirms receipt of the Bid Form with each REC Bidder by telephone. The telephone number used is the telephone number provided on the Bid Form. The Procurement Administrator makes this confirmation within fifteen (15) minutes of receipt of the Bid Form. A REC Bidder that does not receive confirmation within fifteen (15) minutes of submitting its Bid Form should assume

technical difficulties, should proceed to submitting its Bid Form by fax, and should phone the Procurement Administrator.

VI.2.5. If the Bid Form received by the Procurement Administrator is incomplete or inconsistent, the Procurement Administrator will advise the REC Bidder of that fact when confirming receipt of the Bid Form. The REC Bidder may correct and resubmit the Bid Form as long as the Bid Form is received on or before noon on the Bid Date. It is the responsibility of the REC Bidder to ensure that a completely and consistently filled out Bid Form is submitted between 9 AM and noon on the Bid Date. The Procurement Administrator will hold a training session for REC Bidders to practice the bid submission process. REC Bidders are encouraged to participate to minimize the possibility of technical difficulties with the submission of their Bid Forms.

VI.2.6. The Act requires the Procurement Administrator to notify REC Bidders that the Procurement Administrator may, in its discretion, enter into post-bid price negotiations with REC Bidders. The Procurement Administrator has decided that there will be no post-bid negotiations. All Bids that meet the benchmarks are evaluated ~~only on the basis of their price, as well as the resource type and location of the RECs.~~ In accordance with the Act, benchmarks are established by the Procurement Administrator, in consultation with the IPA, the Procurement Monitor, and the ICC Staff. The benchmarks are confidential and are subject to review and approval by the ICC.

VI.2.7. Prior to any selection of RECs based on priority, all RECs that fail to meet the benchmarks established by the Procurement Administrator, the Procurement Monitor and the IPA are eliminated. The evaluation of Bids that meet or beat the benchmarks and the selection of RECs first give priority to cost effectiveness, second to wind resources, and last to location. For RECs of a given source (wind or non-wind) and a given location, RECs with the lowest prices are selected first. For RECs of a given price and a given location, RECs from wind resources are selected over RECs from

non-wind resources eligible under the Act (subject to a threshold of 75% wind). For RECs of a given price and of a given source (wind or non-wind), RECs from resources located in Illinois are selected over RECs from resources located in Adjoining States, and RECs from resources located in Adjoining States are selected over RECs from resources located in Other States. The evaluation and selection in no case will result in the procurement of RECs that exceed the Target or that combine to cost more than the Budget. Details of the evaluation and selection procedure are provided in Appendix 5.

VI.2.8. It is possible that multiple Bidders could submit Bids of the same amount (\$/MWh) for the same Product, resulting in a tie for the highest accepted Bid for a Product. Such Bids are Tied Bids (at the Tied Price) for a Product. If, in order to fill the Target exactly, only some of the Tied Bids for a Product must be accepted, the Bids chosen to fill the Target will be selected at random from the Tied Bids. For the first block needed at the Tied Price, the probability that a particular Bidder is chosen is the number of blocks that the Bidder bid at the Tied Price divided by the total number of blocks bid at the Tied Price. If a second block is needed at the Tied Price, the probability that a particular Bidder is chosen is the number of blocks that the Bidder bid at the Tied Price (and that are not already used to fill the Target) divided by the total number of Tied Bids that have not yet been used to fill the Target. The Procurement Administrator repeats this procedure until the Target for the Product is filled. No selection preference will be given to identical Bids submitted at any particular time or in any particular way.

VI.2.9. By 6 PM on the first business day after the Bid Date, the Procurement Administrator notifies a REC Bidder that had Bids that were evaluated whether any of the REC Bidder's Bids are being recommended for acceptance by the Procurement Administrator. The Procurement Administrator identifies to a REC Bidder the number of RECs of each Product for which the REC Bidder's Bids are being recommended for

acceptance, and identifies the Bid that is the price for each such REC. This notification occurs by telephone, with a written confirmation by fax upon request by the REC Bidder,. The Procurement Administrator provides no other information to a REC Bidder about the results of the procurement event.

VI.2.10. Within one (1) business day of the Bid Date, the Procurement Administrator will submit to the ICC a confidential report that will provide the results of the bidding for each Product as well as a recommendation on whether these results should be accepted or rejected. Also within one (1) business day of the Bid Date, the Procurement Monitor will submit to the ICC a confidential report regarding the results of the RFP. The ICC will decide whether to accept or reject the results of the RFP within two (2) business days of receiving the confidential reports from both the Procurement Administrator and the Procurement Monitor.

VI.2.11. If the ICC accepts the results of the RFP, ~~in whole or in part,~~ the Procurement Administrator will notify all REC Bidders whether some or all of their Bids were accepted by the ICC. Such REC Bidders are called winning REC Bidders. The Procurement Administrator notifies each winning REC Bidder of the number and price of RECs won of each Product. The Procurement Administrator also provides to ComEd the name of each winning REC Bidder, and for each such winning REC Bidders, the number and price of RECs won of each Product. The price received by a winning REC Bidder for a given Product is the average of the REC Bidder's own winning Bids for all RECs won for that Product.

VI.2.12. At the time of ICC approval of a procurement event, the names of winning REC Bidders and the average of the winning bid prices for each Product are made public.

VI.2.13. Within one (1) business day of the ICC decision approving the results, ComEd sends electronically a one (1) copy of each applicable unexecuted Confirmation to each winning REC Bidder. For each winning REC Bidder, there is one (1) Confirmation for each Product for which the winning REC Bidder has winning Bids ~~and an additional,~~ as

well as one (1) Confirmation for the ~~payment for the~~ Supplier Fee, for a maximum of ~~sevenforty~~ (7) Confirmations in total. By ~~1:00 p.m. PM~~ CPT (~~2:00 p.m. EPT~~ PM Eastern Prevailing Time) on the ~~next Business Day~~ following a winning REC Bidder's receipt of ~~such the~~ unexecuted Confirmation(s), both the winning REC Bidder and ComEd ~~shall~~ execute two (2) originals of each Confirmation in counterpart. The winning REC Bidder and ~~shall ComEd~~ return to each other by facsimile or electronic means to each other one (1) ~~copy original~~ of each executed ~~original~~ Confirmation, ~~and shall send with one (1) original of each executed Confirmation to follow~~ by overnight delivery ~~to each other one (1) executed original of each Confirmation and retain one (1) executed original of each Confirmation for their own records. ComEd shall.~~ The winning REC Bidder and ComEd each retains one (1) original of each executed Confirmation. ComEd also fully ~~execute~~executes the REC Master Agreement and ~~sends~~sends with the ~~fully~~ executed Confirmation(s) one (1) original of the executed REC Master Agreement.

VI.2.14. The Procurement Administrator will inform qualified REC Bidders of the amount of the Supplier Fee per REC no later than 6 PM on the Part 2 Date. The Procurement Administrator will provide estimates of the Supplier Fee per REC at the REC Bidder Information Session.

### VI.3. Personnel and Confidentiality

VI.3.1. Any information provided by a REC Bidder in its Part 1 Proposal is provided on a confidential basis to the Procurement Administrator, and may be provided on a confidential basis to the Procurement Monitor, to the IPA or to ICC Staff. ComEd representatives will review the information provided to fulfill the requirements of Section IV.2 and Section IV.6 for each REC Bidder. Any information provided to ComEd is also provided to the Procurement Monitor.

VI.3.2. Any information provided by a REC Bidder in its Part 2 Proposal is provided on a confidential basis to the Procurement Administrator, and may be provided on a

confidential basis to the Procurement Monitor, to the IPA or to the ICC Staff. ComEd representatives will review the Pre-Bid Letter of Credit with the name of the REC Bidder and the amount redacted and will participate in the evaluation of this Pre-Bid Letter of Credit. Any information provided to ComEd is also provided to the Procurement Monitor.

VI.3.3. The Procurement Administrator, the Procurement Monitor, and representatives from ComEd involved in the evaluation of Proposals will consider all data and information provided by REC Bidders in response to this RFP to be confidential and will attempt to limit its disclosure to the public in accordance with the provisions of this Section. ComEd will also take reasonable action to ensure that its employees, representatives and agents authorized to consider and evaluate all Proposals protect the confidentiality of such data and information. Each Representative of the Procurement Administrator, Procurement Monitor, and ComEd that has access to any portion of the Proposals is required to sign a Confidentiality Statement in the form of Appendix 8 to these REC Rules prior to evaluation of any portion of the Proposals. The list of all signatories is available to a REC Bidder upon request.

VI.3.4. However, absolute protection from public disclosure of the REC Bidders' data and information filed in response to this RFP cannot be provided and is not intended. By submitting a Proposal in response to this RFP, each REC Bidder acknowledges and agrees to the limitations of the confidentiality provisions set forth in this Section.

VI.3.5. In addition, the REC Bidders' data and information filed in response to the RFP will be disclosed if required by any federal, state or local agency (including, without limitation, the ICC) or by a court of competent jurisdiction. ComEd or the Procurement Administrator will notify the REC Bidder in advance of such disclosure and cooperate with such REC Bidder, to the extent deemed reasonable by ComEd, and at the expense of the REC Bidder, to prevent the disclosure of such materials. In any event, ComEd, its employees, and agents including the Procurement Administrator

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(Redline edits reflect changes from draft documents posted March 30, 2009)

~~DRAFT March 30, 2009~~ Renewables RFP

CORRECTED 4-13-09

will not be responsible to the REC Bidders or any other party or liable for any disclosure of such designated materials before, during or subsequent to this RFP.

## ARTICLE VII. Reserved Rights

- VII.1.1. ComEd will not be liable to any REC Bidder or any other party for failure to execute a REC Master Agreement. Nothing herein may be construed to bind ComEd unless and until the ICC has approved winning Bids, and each REC Master Agreement and Confirmation with a REC Bidder has been executed and is effective. Once effective, it is the REC Master Agreement and not REC Rules or any documents relating thereto that will govern the relationship between and the responsibilities of the parties.
- VII.1.2. The Procurement Administrator reserves the right to reject Proposals submitted in response to this RFP that are incomplete, or do not conform with the requirements of this RFP, or are submitted beyond the deadline for submission, or are submitted by a REC Bidder that tries to unduly influence in any way the evaluation process.