<u>Commonwealth Edison Company</u>

<u>Response to Request for Stakeholder Comments on Adjustable Block Program REC Contract</u>

<u>May 12, 2020</u>

In response to the Illinois Power Agency's (IPA) April 9, 2020 request for stakeholder comments on the Adjustable Block Program REC contract, Commonwealth Edison Company ("ComEd") submits these comments in good faith and expressly reserves the right to amend these comments as the stakeholder process proceeds.

I. Use of the ABA-EMA-ACORE REC Purchase & Sale Agreement as a base and a Cover Sheet to modify its terms.

a. Shortening and simplifying the REC Contract (and, if possible, synthesizing the contract into a single set of terms and conditions).

The current REC Contract is difficult to navigate and reference. Exhibit J, the REC Contract's base, is the ABA-EMA-ACORE REC Purchase & Sale Agreement. Substantive additions, deletions and changes are layered on top of Exhibit J. A single comprehensive document will be simpler to review, interpret and reference when necessary.

b. Separate contracts for distributed generation and community solar projects.

Approved Vendors often have multiple transactions and could have both types of projects. Under the current process each Approved Vendor signs a single contract. Should the ICC approve additional project batches for the specific Approved Vendor, a Product Order is executed. Multiple contracts, based on type, would be administratively burdensome and offset some of the efficiencies of the Product Order/Batch process.

c. Comments on various exhibits appended to the January 2019 REC Contract (such as the form of the annual report or the Schedules to the Product Order).

Schedule A to Exhibit A and Schedule B should include the Trade Date (ICC Approval Date).

d. Areas where the structure of the contract is currently unclear and should be clarified in respect of obligations or penalties applicable at a project level, or at a batch (portfolio) level, or at a master contract level.

Damages for all Events of Default should be simplified using a sole and exclusive remedy provision similar to the following:

> *The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to comply with one or more of Sections 4(a) through (d) (inclusive), (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty and (D) the remedies specified in this*

Section 4 shall be Buyer's sole and exclusive remedy in the event that Seller fails to comply with one or more of Sections 4(a) through (d).

*Additionally, there are several instances where the current REC contracts sets damages at "the greater of: (i) the Collateral Requirement with respect to such Designated System or (ii) one hundred percent (100%) of the total payments Seller has received from Buyer associated with RECs from such Designated System." These instances should be revised to set damages at "the Collateral Requirement **and** one hundred percent of the total payments Seller has received from Buyer". Retention of collateral appears to be the basis of several sole and exclusive damage provisions and use of "the greater of" creates an inconsistency.*

II. Issues related to the process for release or reduction of the letter of credit.

The REC contract should clearly outline that the release/reduction of the letter of credit cannot occur until after the replacement cash collateral is withheld from the last payment.

III. Incorporation of Acknowledgement of Assignment forms.

For ease of administration and to ensure that all Approved Vendors uniformly adhere to the same terms, any standardized forms should be included in the contract.

IV. IPA as Mediator.

Disputes involving contract interpretation or resolution of unanticipated circumstances should be considered for IPA mediation. The IPA's determinations should be memorialized and binding on the Buyer and Seller.

V. Other Pertinent Issues.

A clarification to the Quarterly Payment Cycle process is necessary to ensure that it operates as intended. It is ComEd's understanding that an Approved Vendor would provide one invoice per quarter and receive one payment per quarter for all of its applicable systems. Allowing Approved Vendors to send quarterly invoices for a subset of its systems could create additional unintended cycles. For example, if an Approved Vendor submits invoices for a subset of its systems in January, a second subset in February and third subset in March, a monthly payment cycle would be the effective result.