

DRAFT Appendix 9 – Pre-Bid Letter of Credit for ComEd

[On Issuing Bank's Letterhead]

IRREVOCABLE STANDBY LETTER OF CREDIT

_____ (“Date of Issuance”)

Letter of Credit No. _____

Beneficiary:

Commonwealth Edison Company (“ComEd”)

Applicant:

[Name of Applicant]

[Address]

1. We, _____ (the “Issuing Bank”), hereby establish this Irrevocable Standby Letter of Credit (this “Letter of Credit”) in your favor in the amount of USD \$_____, effective immediately and available to you at sight upon demand at our counters at _____ [designate Issuing Bank's location for presentments] and expiring at 5 PM (Eastern Prevailing time) on April 27, 2017 (the “Expiration Date”), unless terminated earlier in accordance with the provisions of Paragraph 9 hereof.
2. This Letter of Credit is issued at the request and for the account of _____ (including its successors and assigns, the “Bidder”). This Letter of Credit may be drawn by presenting the documents required by paragraph 3 hereof, including your drawing certificate stating that:
 - a) “the Bidder has disclosed information relating to its Proposal publicly or to any other party before the Illinois Commerce Commission has rendered its decision on the results of the Procurement Event”; or
 - b) “the Bidder has made a material omission or misrepresentation in the Part 1 Proposal or the Part 2 Proposal submitted in connection with the Procurement Event”; or
 - c) “the Bidder has failed to execute the applicable supplier contract or has failed to meet the creditworthiness requirements of the applicable supplier contract within three (3) business days of being notified that the Illinois Commerce Commission has approved the Bidder's winning bids”; or
 - d) “the Bidder has failed to pay the applicable Supplier Fee to the Illinois Power Agency within seven (7) business days of being notified that the Illinois Commerce Commission has approved the Bidder's winning bids”.
3. We hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the amount available under this Letter of Credit from time to time, subject to reduction as provided in Paragraph 8. A partial or full drawing hereunder may be presented by you on any Business Day on or prior to the Expiration Date by delivering or transmitting to the Issuing Bank at _____ [U.S. address], (a) a notice executed by you substantially in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of ComEd, and (b) your draft substantially in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of ComEd.

4. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: _____, and confirmed by telephone to us at the following number(s): _____. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.
5. We will honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in your draft (or so much thereof as is available hereunder) delivered or transmitted to us in connection with such drawing to the account designated as provided below, by 3 PM (Eastern Prevailing time) on the date of such drawing, if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made prior to 11 AM (Eastern Prevailing time) on a Business Day, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made on or after 11 AM (Eastern Prevailing time) on any Business Day.
6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice not later than the time provided in Paragraph 5 above for honor of a drawing presented to us, that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons why the demand for payment was not so effected, and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
7. Unless otherwise hereafter designated in writing to us by an Authorized Officer of ComEd, all payments made by us under this Letter of Credit shall be transmitted by wire transfer to ComEd pursuant to the following instructions:

Commonwealth Edison Company

Account No.: _____

Bank: _____

Bank's Address: _____

ABA Routing No.: _____

Contact: _____

Telephone No.: _____

8. Partial drawings are permitted hereunder and multiple presentations are permitted hereunder. The amount available for drawing by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not be deemed a failure to comply with the requirements of Paragraph 3 hereof, provided that the amounts payable on any such demand shall thus be limited to the amount then available to be drawn under this Letter of Credit.

9. This Letter of Credit shall terminate on the earliest of: (a) the date you have made drawings which exhaust the amount available to be drawn under this Letter of Credit; (b) the date we receive from you a Certificate of Cancellation in the form of Annex 3 hereto together with the original of this Letter of Credit (and subsequent amendments, if any) returned for cancellation; or (c) 5 PM (Eastern Prevailing time) on the Expiration Date.
10. This Letter of Credit is not transferable, and except as otherwise expressly stated herein, is subject to the Uniform Customs and Practice for Documentary Credits – 2007 revision, International Chamber of Commerce Publication No. 600, (the “UCP”). All banking charges are for the account of the Bidder. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.
11. Article 36 of the UCP as it applies to this Letter of Credit is hereby modified to provide as follows:

If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business.

Article 36 of the UCP as it applies to this Letter of Credit is hereby further modified by providing that any alternate place for presentation we may designate pursuant to this rule must be in the United States.

12. As used herein:

“Authorized Officer” shall mean President, Treasurer, any Vice President or Senior Vice President or any Assistant Treasurer.

“Bidder” shall mean an entity that has been notified that it has successfully completed the Part 1 Proposal.

“Business Day” shall mean any day on which Federal Reserve Banks and Branches are open for business, such that payments can be effected on the Fedwire system.

“Procurement Event” shall mean the request for proposals, the evaluation of proposals and bids for wholesale energy products, and the execution of the applicable supplier contracts with Commonwealth Edison Company as a counterparty pursuant to the Procurement Plan for the period starting in June 2017, as proposed by the Illinois Power Agency and approved by the Illinois Commerce Commission in Docket No. 16-0453.

13. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above. Except as otherwise expressly stated herein, this Letter of Credit may not be amended or modified by us without the consent of an Authorized Officer of the beneficiary.

14. We, the Issuing Bank, certify that as of the Date of Issuance our senior unsecured debt is rated “A” or better by Standard & Poor’s (S&P) if rated by S&P, “A2” or better by Moody’s Investors Service (Moody’s) if rated by Moody’s, and, “A” or better by Fitch Ratings (Fitch) if rated by Fitch. We hereby certify that our senior unsecured debt is rated by at least two of S&P, Moody’s, and Fitch. If affiliated with a foreign bank, we further certify we are a U.S. branch office of such foreign bank and that as of the Date of Issuance of this Letter of Credit, our senior unsecured debt meets the ratings requirement of this paragraph.
15. This original Letter of Credit is being sent to Vice President, Energy Acquisition, Commonwealth Edison Company, 1919 Swift Drive, Oak Brook, IL 60523-1580. The aggregate amount paid to ComEd during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of ComEd. Acceptance or rejection of any amendments to this Letter of Credit must be signed by an Authorized Officer of ComEd.

Very truly yours,
[Issuing Bank]

Signature: _____
Name:
Title:
Date:

DRAFT

Annex 1 TO LETTER OF CREDIT

DRAWING CERTIFICATE UNDER LETTER OF CREDIT NO. _____

_____, 20__

To: [Issuing Bank]
[Address]

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under your Letter of Credit No. _____ (the "Letter of Credit") in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used herein that are not defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. The undersigned is making a drawing under the Letter of Credit. The amount to be received by ComEd is (USD) \$_____.
3. Pursuant to Paragraph 2 of the Letter of Credit No. _____, dated _____, the undersigned is entitled to make a drawing under the Letter of Credit inasmuch as the Bidder has _____ [state a reason from conditions (a) – (d) of Paragraph 2 of the Letter of Credit].
4. The undersigned acknowledges that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by the amount of this drawing honored by you.

Very truly yours,

Commonwealth Edison Company

By _____

Name:

Title:

Date:

cc: _____ [Bidder]

Annex 2 to LETTER OF CREDIT

SIGHT DRAFT

Amount: \$ _____

Date: _____, 20__

At sight, pay to the order of Commonwealth Edison Company the sum of _____ U.S. Dollars.

Drawn under Irrevocable Standby Letter of Credit No. _____ of _____ [identify Issuing Bank] dated _____, 20__.

To: _____ [Issuing Bank]
_____ [Address]

Commonwealth Edison Company

By _____
Name:
Title:
Date:

Annex 3 to LETTER OF CREDIT

CERTIFICATE OF CANCELLATION

_____, 20__

To: [Issuing Bank]
[Address]

Attention: Standby Letter of Credit Unit/Your Letter of Credit No. _____

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above-referenced Letter of Credit may be cancelled without further payment. Attached hereto is the original Letter of Credit (and subsequent amendments, if any), marked cancelled.

Commonwealth Edison Company

By _____
Name:
Title:
Date:

cc: _____ [Bidder]