

## **Illinois Power Agency Spring 2021 Procurement Events**

### **Invitation to Comment on Proposed Changes to the Draft (AIC) Capacity Agreement Procurement of Capacity for the Ameren Illinois Company Portfolio**

#### **Invitation to Comment**

On September 28, 2020, the IPA submitted its Procurement Plan (“Plan”) to the Illinois Commerce Commission (“ICC”) in compliance with Public Act 095-0481 (the “Act”), which includes the Illinois Power Agency Act (“IPA Act”). The ICC issued its Order with regards to the Plan on November 5, 2020. The Plan provides for the procurement of capacity for Ameren Illinois Company (“AIC”) in the Spring 2021 Block Energy and Capacity Request for Proposals (“BEC RFP”) for the 2022-2023 and 2023-2024 planning years. (While the procurement of capacity is for AIC only, the BEC RFP also will solicit bids for energy blocks for AIC, Commonwealth Edison Company, and MidAmerican Energy Company.)

**The Procurement Administrator invites interested parties to submit their comments on the proposed changes incorporated into the Draft (AIC) Capacity Agreement. A separate invitation has been issued to solicit comments on the proposed changes to the energy contracts.**

The Procurement Administrator is proposing to use the 2020 (AIC) Capacity Agreement with changes. Comments are solicited on proposed changes that have been made relative to the previously used 2020 (AIC) Capacity Agreement only and not on the entire contract.

#### **Timeline and Process**

The Draft (AIC) Capacity Agreement has been issued as a Microsoft word document for interested parties to submit their comments.

The timeline and process for interested parties to provide comments on the proposed changes for the Draft (AIC) Capacity Agreement are as follows:

- Please submit your comments with tracked changes in Microsoft Word on the Draft (AIC) Capacity Agreement.
- You may submit additional comments or explanatory notes in a separate document or via email.
- Please submit your comments to the Procurement Administrator by e-mail at [Illinois-RFP@nera.com](mailto:Illinois-RFP@nera.com)
- Please provide telephone and email contact information in the event that the Procurement Administrator seeks clarification regarding your comments.

**The deadline to provide comments is on February 24, 2021.**

Please direct any questions regarding this comment process to the Procurement Administrator at [Illinois-RFP@nera.com](mailto:Illinois-RFP@nera.com)

#### **Proposed Changes**

All proposed changes as numbered below are provided for the convenience of interested parties in an

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attachment to this document. A summary of the proposed changes from the previously used 2020 (AIC) Capacity Agreement is provided below.

<b>Proposed Changes</b>		
<b>Proposed Change</b>	<b>Section</b>	<b>Nature of Change</b>
1	Product	Process that would address a change to MISO resource adequacy construct
2	Governing Law	Change from New York to Illinois
3	Notices	Update contact information for Buyer All Notices
4	Confidentiality	New paragraph regarding customer account information
5	Signature pages	Update dates
6	Form of Guaranty	Change governing law from New York to Illinois
7	Schedule 2 to the Form of Guaranty	Change governing law from New York to Illinois

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

Attachment to Invitation to Comment

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

**1:**

Product:	Zonal Resource Credits (“ZRC”) shall have the meaning given to it in the MISO Documents.  For clarification purposes, the Parties acknowledge and understand that, in accordance with the MISO Documents, one ZRC represents one megawatt (“MW”) of Unforced Capacity (as such term is defined in the MISO Documents) that qualify to satisfy the resource adequacy requirements in each Local Resource Zone (“LRZ”) (as such term is defined in the MISO Documents) of Module E of the MISO Tariff. Additionally, Seller must be able to transfer the ZRCs to Buyer using the Module E Capacity Tracking Tool (“MECT”), in accordance with Section 1 (Performance, Title & Delivery) below or any successor system.  <u>The Parties acknowledge and agree that Buyer has entered into this Confirmation Agreement with the intention of satisfying a portion of its resource adequacy requirements for the Planning Years identified in Table A (“Contract Planning Years”). In the event that MISO receives FERC approval to implement any change to its resource adequacy construct that, for any Contract Planning Year, includes a seasonal component or requires a product other than a ZRC (as defined as of the Date of Execution) in order to satisfy Buyer’s resource adequacy requirements, Buyer shall notify Seller in writing (such notice, a “MISO Change Notice”) on or before the date that is ten (10) days after such FERC approval. On or before the date that is fifteen (15) days after Seller’s receipt of a MISO Change Notice, Seller may provide to Buyer, the Illinois Power Agency and the Illinois Commerce Commission Staff written comments or proposals to be considered in the formation of an amendment to address the change(s) described in the MISO Change Notice. On or before that date that is thirty (30) days after Seller’s receipt of a MISO Change Notice, Buyer shall propose to the Illinois Power Agency and the Illinois Commerce Commission Staff a written amendment to this Confirmation Agreement (the “Proposed Amendment”) that addresses the change(s) described in the MISO Change Notice and seeks to achieve an allocation of benefits and burdens to each Party that is substantially similar to the allocation of benefits and burdens that existed at the time of execution of this Confirmation Agreement; provided, however, if an amendment to address the change(s) described in the MISO Change Notice is not viable (as determined by Buyer), Buyer shall inform the Illinois Power Agency and the Illinois Commerce Commission Staff that a Proposed Amendment is not viable (such date upon which Buyer delivers the Proposed Amendment or notice that a Proposed Amendment is not viable to the Illinois Power Agency and the Illinois Commerce Commission</u>
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Staff, the "Proposal Date"). Buyer shall consult with the Illinois Power Agency (in consultation with its procurement administrator) and the Illinois Commerce Commission Staff (in consultation with its procurement monitor) in an effort to create a form of the Proposed Amendment that is agreed to by Buyer, the Illinois Power Agency (in consultation with its procurement administrator) and the Illinois Commerce Commission Staff (in consultation with its procurement monitor) (such agreed amendment, the "Approved Amendment"). For the avoidance of doubt, an Approved Amendment requires agreement by Buyer, the Illinois Power Agency and the Illinois Commerce Commission Staff. If, within thirty (30) days of the Proposal Date (such date, the "Approval Deadline") Buyer, the Illinois Power Agency and the Illinois Commerce Commission Staff have not agreed upon an Approved Amendment, then, (i) if all Contract Planning Years would be impacted by the changes identified in the MISO Change Notice, this Confirmation Agreement shall be deemed automatically terminated and neither Party shall have any further liability to the other Party except for those liabilities arising prior to the date of termination or (ii) if only one of the Contract Planning Years would be impacted by the changes identified in the MISO Change Notice, only the portion of the Confirmation Agreement related to the impacted Contract Planning Year shall be deemed automatically terminated and, with respect to the impacted Contract Planning Year only, neither Party shall have any further liability with respect to such Contract Planning Year except any liability arising prior to the date of termination. If the Buyer, the Illinois Power Agency and the Illinois Commerce Commission Staff agree upon an Approved Amendment on or before the Approval Deadline, Buyer shall provide such Approved Amendment to Seller. Notwithstanding any other provision of this Confirmation Agreement to the contrary, under no circumstance shall Buyer be obligated to execute an Approved Amendment on or after the date that is five (5) Business Days prior to the date by which Fixed Resource Adequacy Plans must be submitted to MISO for the Contract Planning Year(s) that are implicated in such Approved Amendment. Within twenty (20) days of receipt of such Approved Amendment Seller shall notify Buyer whether Seller accepts the Approved Amendment or whether Seller rejects the Approved Amendment. If Seller does not respond within such twenty (20) day period, the Approved Amendment shall be deemed rejected by Seller. If the Approved Amendment is approved by Seller, Buyer and Seller shall promptly execute the Approved Amendment in substantially the same form of the Approved Amendment initially provided to Seller. Notwithstanding any other provision of this Confirmation Agreement to the contrary, Buyer shall not be obligated to execute an Approved Amendment that deviates from Approved Amendments executed with different counterparties pursuant to additional applicable capacity confirmation agreements. If Seller rejects the Approved Amendment (or such Approved Amendment is deemed

rejected), then, (i) if all Contract Planning Years would be impacted by the changes identified in the MISO Change Notice, this Confirmation Agreement shall be deemed automatically terminated and neither Party shall have any further liability to the other Party except for those liabilities arising prior to the date of termination or (ii) if only one of the Contract Planning Years would be impacted by the changes identified in the MISO Change Notice, only the portion of the Confirmation Agreement related to the impacted Contract Planning Year shall be deemed automatically terminated and, with respect to the impacted Contract Planning Year only, neither Party shall have any further liability with respect to such Contract Planning Year except any liability arising prior to the date of termination.

**2:**

**11. Governing Law.**

This Confirmation Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of ~~New York~~ Illinois. With respect to any action, suit or proceedings relating to this Confirmation Agreement (“Proceedings”), each party irrevocably: (i) submits to the exclusive jurisdiction of the courts of the State of Illinois and the United States District Court located in the Northern District of Illinois, and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have jurisdiction over such party. Nothing in this Confirmation Agreement precludes either party from bringing Proceedings in any other jurisdiction in order to enforce any judgment obtained in any Proceedings referred to in the preceding sentence, nor will the bringing of such enforcement Proceedings in any one or more jurisdictions preclude the bringing of enforcement Proceedings in any other jurisdiction.

**3:**

**12. Notices.**

All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, via electronic means or other documentary form. Notice shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close in which case it shall be deemed received at the close of the next Business Day). Notice by overnight mail or overnight courier shall be deemed to have been received one (1) Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith:

**SELLER**

[Winning Bidder]  
("Party A")

All Notices:

Attn:

Street:

City:

~~Attn:~~

~~Phone:~~

~~Duns:~~Phone:

~~Federal Tax ID Number:~~Duns:

Federal Tax ID Number:

**Invoices:**

Attn:

Phone:

Email:

With a copy to:

Attn:

Phone:

Email:

**Payments:**

Attn:

Phone:

**Wire Transfer:**

BNK:

ABA:

ACCT:

**BUYER**

Ameren Illinois Company d/b/a Ameren Illinois  
("Party B")

All Notices:

Attn: Power Supply Acquisition

Richard McCartney

dlpowersupplyacquisition@ameren.com

Street: 10 Executive Drive MC 910

City: Collinsville, IL 62234

~~Attn: Power Supply Acquisition~~

~~Richard McCartney~~

~~Phone: (618) 301-5204~~

Duns: 00-693-6017

Federal Tax ID Number: 37-0211380

**Invoices:**

Attn: Derek Langenhorst

Phone: (314) 554-6380

Email: dlangenhorst@ameren.com

rbennett@ameren.com

With a copy to:

Attn: Power Supply Acquisition

Phone: (618) 301-5299

Email: dlpowersupplyacquisition@ameren.com

**Payments:**

Attn: Sam Cassmeyer

Phone: (314) 554-4287

**Wire Transfer:**

BNK: [\_\_\_\_\_]

ABA: [\_\_\_\_\_]

ACCT: [\_\_\_\_\_]

<b>ACH Transfer:</b> BNK: ABA: ACCT:	<b>ACH Transfer:</b> BNK: [_____] ] ABA: [_____] ] ACCT: [_____] ]
<b>Credit and Collections:</b> Attn: Phone: Email:	<b>Credit and Collections:</b> Attn: Tim Moloney Phone: (314) 613-9139 Email: DLAICCreditRiskManagement@ameren.com
With additional Notices of an Event of Default or Potential Event of Default to:	With additional Notices of an Event of Default or Potential Event of Default to:
Attn: Phone:	Attn: President & CEO Phone: [_____] ]

**4:**

**17. Confidentiality.**

Neither Party shall disclose the terms or conditions of this Confirmation Agreement to a third party (other than the Party's or Party's affiliates' employees, officers, directors, lenders, counsel, accountants or advisors, or a prospective purchaser or investor of a Party, who have a need to know such information and have agreed to keep such terms confidential) except with written consent from the other Party or in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its affiliates or as may be required by the Illinois Power Agency; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure; provided, however, that Buyer shall have the ability to disclose the Commercial Terms of this Confirmation Agreement in order to demonstrate compliance with all applicable laws, rules, regulations and requirements regarding resource adequacy. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. Either Party may disclose any one or more of the commercial terms of this Confirmation Agreement (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy and/or capacity price index. The Parties shall maintain the confidentiality of the terms of all transactions hereunder in compliance with Section 16-111.5(h) of the Illinois Public Utilities Act (220 ILCS 5/16-111.5(h)). This confidentiality obligation shall survive following the expiration or termination of this Confirmation Agreement; provided, however, that with respect to any confidential information that constitutes a "trade secret" under applicable law, these covenants shall apply for the life of the trade secret.

[To the extent that Seller obtains information relating to a customer's Buyer utility account as part of the administration of this Confirmation Agreement, and that information is confidential or](#)

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generally non-public, including customers' utility account number, utility account name, and meter number, Seller shall maintain the confidentiality and security of such information received from customers. Further, Seller shall not release such customer's information to any other person or entity other than the customer, MISO, FERC, the Illinois Power Agency, the Illinois Commerce Commission or any other governmental agency that requires access to such information for the purposes of this Confirmation Agreement without the customer's written consent to such release.

**5:**

***(Signature Page 1)***

**[Winning Bidder]**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:  
Title:

**Ameren Illinois Company d/b/a Ameren Illinois**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:  
Title:

[SIGNATURE PAGE TO AIC/[\_\_\_\_\_] ~~2020~~2021 SPRING CAPACITY CONFIRMATION AGREEMENT]

***(Signature Page 2):***

**[Winning Bidder]**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:  
Title:

**Ameren Illinois Company d/b/a Ameren Illinois**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:  
Title:

[SIGNATURE PAGE TO AIC/[\_\_\_\_\_] ~~2020~~2021 SPRING CAPACITY CONFIRMATION AGREEMENT]

**6:**

14. This Guaranty and the rights and obligations of the Counterparty and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the State of ~~New York~~ Illinois. The Guarantor and Guaranteed Party agree and irrevocably submit to the exclusive jurisdiction of state and federal courts located in the Northern District of the State of Illinois over any disputes arising or relating to this Guaranty and waive and agree not to assert as a defense any objections to venue or inconvenient forum. The Guarantor and the Guaranteed Party consent to and grant any such court jurisdiction over the person of such party and over the subject matter of such dispute and agree that summons or other legal process in connection with any such action or proceeding shall be deemed properly and effectively served when sent by certified U.S. mail, return receipt requested, to the address of the other party set forth in Paragraph 12 hereof, or in such other manner as may be permitted by law. The Guarantor and the Guaranteed Party each hereby irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.

**7:**

14. This Guaranty and the rights and obligations of the Counterparty and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the State of ~~New York~~ Illinois. The Guarantor and Guaranteed Party agree and irrevocably submit to the exclusive jurisdiction of state and federal courts located in the Northern District of the State of Illinois over any disputes arising or relating to this Guaranty and waive and agree not to assert as a defense any objections to venue or inconvenient forum. The Guarantor and the Guaranteed Party consent to and grant any such court jurisdiction over the person of such party and over the subject matter of such dispute and agree that summons or other legal process in connection with any such action or proceeding shall be deemed properly and effectively served when sent by certified U.S. mail, return receipt requested, to the address of the other party set forth in Paragraph 12 hereof, or in such other manner as may be permitted by law. The Guarantor and the Guaranteed Party each hereby irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.