

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company	:	
d/b/a AmerenCILCO	:	
	:	05-0160
Proposal to implement a competitive procurement	:	
process by establishing Rider BGS, Rider BGS-L,	:	
Rider RTP, Rider RTP-L, Rider D, and Rider MV.	:	(Cons.)
(Tariffs filed on February 28, 2005)	:	
Central Illinois Public Service Company	:	
d/b/a AmerenCIPS	:	
	:	05-0161
Proposal to implement a competitive procurement	:	
process by establishing Rider BGS, Rider BGS-L,	:	
Rider RTP, Rider RTP-L, Rider D, and Rider MV.	:	
(Tariffs filed on February 28, 2005)	:	
Illinois Power Company d/b/a AmerenIP	:	
	:	05-0162
Proposal to implement a competitive procurement	:	
process by establishing Rider BGS, Rider BGS-L,	:	
Rider RTP, Rider RTP-L, Rider D, and Rider MV.	:	
(Tariffs filed on February 28, 2005)	:	

Direct Testimony of
Michael D. Smith
Vice President, Regulatory and Legislative Affairs
Constellation Energy Commodities Group, Inc.

1
2 **TESTIMONY OF MICHAEL D. SMITH**
3

4 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

5 **A.** My name is Michael D. Smith, and my primary business address is Constellation
6 Energy Commodities Group, Inc. (“CCG”), 111 Market Place, Suite 500,
7 Baltimore, MD 21202.

8 **Q. WHAT IS YOUR POSITION WITH CCG?**

9 **A.** I am Vice President—Regulatory and Legislative Affairs. In that capacity, I am
10 responsible for, among other things, regulatory affairs in the Midwest region of
11 the United States relative to CCG’s wholesale business, including Illinois and the
12 Midwest Independent System Operator (“Midwest ISO”).

13 **Q. PLEASE DESCRIBE YOUR EDUCATION AND YOUR BUSINESS**
14 **EXPERIENCE.**

15 **A.** I graduated from the University of Miami in 1989 with a Bachelors of Arts in
16 Political Science and Economics. I then attended Duke University School of Law
17 and was awarded a Juris Doctorate in 1992. From 1992 until 1997 I was a trial
18 attorney at the law firm of Bricker & Eckler, LLP in Columbus, Ohio. In 1997, I
19 joined the in house legal department of Enron Energy Services (“EES”), the retail
20 marketing subsidiary of Enron Corp. I remained with EES until 2002, when I
21 returned to private practice at Bricker & Eckler, LLP. I began my employment
22 with CCG in August of 2003 in the capacity described above.

23 **Q. PLEASE STATE THE PURPOSE OF YOUR TESTIMONY IN THIS**
24 **CASE.**

25 **A.** The purpose of my testimony is to generally support the Competitive Procurement
26 Auction (CPA) process proposed by Central Illinois Light Company, d/b/a
27 AmerenCILCO, Central Illinois Public Service Company, d/b/a AmerenCIPS, and
28 Illinois Power Company d/b/a AmerenIP (collectively “Ameren”) in this case, and
29 to make recommendations regarding several features of the CPA.

30 **Q. PLEASE DESCRIBE THE BUSINESS INTERESTS OF CCG IN THIS**
31 **PROCEEDING.**

32 A. CCG is a potential wholesale participant in the CPA (as defined in the Ameren
33 filings). CCG is a wholly-owned subsidiary of Constellation Energy Group, Inc.
34 (“CEG”), a Fortune 200 company based in Baltimore, Maryland. CCG focuses
35 on wholesale power transactions to wholesale customers (distribution utilities, co-
36 ops, municipalities, power marketers, large companies and other large load
37 serving entities). A substantial portion of CCG’s business involves providing
38 wholesale full requirements electricity service to distribution utilities that are
39 providing standard offer service to their customers. CCG has been particularly
40 active in offering this type of service in the states of Maine, Massachusetts, New
41 Jersey and Maryland and has participated in the process of designing the
42 procedures through which generation supply is procured to supply standard offer
43 service customers in these markets. CCG has been active in the design of—and
44 has participated in—the New Jersey BGS auction on which the CPA is based.

45 **Q. DOES CCG SERVE ANY LOAD IN ILLINOIS NOW?**

46 A. Yes. CCG serves approximately 175 MW of wholesale full requirements load to
47 several Illinois municipal utilities and cooperatives. In addition, CCG’s
48 generation affiliates own and operate two generation facilities in Illinois: Holland,
49 a 665 MW combined cycle natural gas plant in Shelby County, and University
50 Park, a 300 MW natural gas fired peaking facility located 30 miles south of
51 Chicago.

52 **Q. PLEASE DESCRIBE CCG’S INVOLVEMENT IN THIS CASE SO FAR.**

53 A. CCG was actively involved in the Procurement Working Group of the ICC’s
54 stakeholder process during the Summer of 2004. This working group fully vetted
55 more than 10 different proposals for the procurement and pricing of full
56 requirements electricity service for standard offer customers, including the CPA
57 proposed by Ameren in this case. In addition, CCG provided testimony to the
58 Special House Committee on Electric Restructuring on February 15, 2005,
59 supporting the CPA.

60 **Q. DOES CCG SUPPORT THE OVERALL ILLINOIS AUCTION**
61 **STRUCTURE AS PROPOSED BY AMEREN?**

62 A. Yes. CCG believes that the CPA proposed by Ameren incorporates the serious
63 and thoughtful consideration provided by numerous stakeholders with differing
64 interests during the Procurement Working Group discussions. The Procurement
65 Working Group last summer developed a list of 18 attributes of a successful
66 procurement model and, of all the different structures considered, the
67 Procurement Working Group determined that the CPA best meets those attributes.
68 CCG agrees with that determination. Through this proposed mechanism, Ameren
69 will be able to bring the benefits of competition to those customers who do not or
70 cannot obtain their service from an Alternative Retail Electric Supplier (“ARES”).

71 **Q. DOES CCG SUPPORT THE PROPOSED APPLICATION OF BGS-LFP,
72 BGS-FP AND BGS-LRTP AUCTION PRODUCTS TO VARIOUS
73 CUSTOMER SEGMENTS, BASED UPON CUSTOMER PEAK DEMAND?**

74 A CCG supports the BGS-LRTP and BGS-LFP structure proposed by Ameren.
75 CCG also supports the BGS-FP structure, including the three year contract
76 portfolio structure of fixed priced contract terms, for customers with a peak
77 demand of less than 400 kW, but takes no position on the application of that same
78 contract portfolio structure for customers with a peak demand between 400 kW
79 and 1 MW.

80 **Q. DOES CCG HAVE ANY OBSERVATIONS ABOUT THE BGS-LFP
81 PROPOSAL?**

82 A. CCG supports Ameren’s BGS-LFP proposal for the customers with a peak
83 demand greater than 1 MW. However, the Commission should be aware that,
84 since the potential BGS-LFP customers will have a period of time (Ameren has
85 proposed 30 days) to choose the BGS-LFP service (rather than an hourly service
86 or receiving service from an ARES), it is likely that the generation supply rates
87 for BGS-LFP customers will be higher as suppliers will likely price an auction
88 premium into their bids to account for this optionality.

89 **Q. DOES CCG BELIEVE WHOLESALE POWER MARKETERS WILL
90 PARTICIPATE IN AN AUCTION IF THE ILLINOIS AUCTION
91 STRUCTURE IS IMPLEMENTED?**

92 A. Yes. CCG believes that if the CPA is implemented, there will be substantial
93 participation in that competitive process by power marketers such as CCG. As a
94 result, Ameren’s cost to serve its standard offer customer load will be determined
95 through a robust competitive process, ensuring that Ameren has procured the
96 power supply to serve these customers in the most cost-effective manner. In
97 effect, these customers who do not or cannot obtain their energy requirements
98 from an ARES will enjoy the benefits of competition.

99 **Q. DOES CCG HAVE ANY SUGGESTED CHANGES TO THE PROPOSED**
100 **AUCTION PROCESS?**

101 A. While CCG does not at this time have any suggested changes to the auction
102 process as it is currently proposed, CCG does have suggestions for the
103 Commission to consider regarding (i) auction timing; (ii) the Commission’s
104 review of the auction results; (iii) the filing and resolution of the related Ameren
105 rate case; and, (iv) the proposed Supplier Forward Contract (“SFC”).

106 **Q. WHAT IS THE CURRENT PROPOSAL ON AUCTION TIMING?**

107 A. ComEd and Ameren have proposed similar auction processes to be held
108 separately because of the slight differences in product offerings necessitated by
109 the different Midwest ISO and PJM markets. CCG agrees with Ameren that this
110 is the best approach until the Midwest ISO and PJM markets become similar
111 enough that a simultaneous auction for both utilities can be considered.
112 Furthermore, ComEd and Ameren have proposed to hold their separate auctions at
113 separate times (ComEd in September of 2006 (Original Sheet 266 of proposed
114 Rider CPP) and Ameren in May of 2006 (Original Sheet 27.026 of proposed
115 Rider MV)), but there was some discussion in stakeholder meetings of trying to
116 hold the two separate auctions at the same time.

117 **Q. WHAT IS CCG’S SUGGESTION IN THIS REGARD?**

118 A. CCG proposes that the separate auctions be held during the same general time
119 period but not at the same time. CCG believes that holding the auctions around
120 the same time—for instance, during consecutive weeks—will allow potential
121 bidders to best allocate internal resources to plan for and participate in each
122 auction, which will maximize the chance of achieving the best price results from

123 each auction. Further, CCG agrees with Ameren that May of 2006 would be the
124 best time to hold each of the initial auctions, with subsequent auctions being
125 conducted in the Winter of each year thereafter commencing in 2008. Holding
126 the initial auctions in May of 2006 will provide successful bidders with ample
127 opportunity to hedge their positions prior to delivery. In addition, as these will be
128 the first such auctions in Illinois, May auctions will provide sufficient time,
129 subsequent to the initial auction, for the utilities, winning suppliers and the
130 Midwest ISO and PJM to ensure that all of the operational details associated with
131 providing service to bundled service customers via the auction mechanism are in
132 place.

133 **Q. WHAT IS CCG'S CONCERN REGARDING THE SCOPE OF THE**
134 **COMMISSION'S REVIEW OF THE AUCTION RESULTS?**

135 **A.** Original Sheet 27.028 of Ameren's filed Rider MV (using the AmerenIP filing as
136 an example) provides that the Commission, within three business days of the
137 Auction Completion Date (as defined in Ameren's filing), may (presumably upon
138 its review of the auction results) initiate a formal investigation or other formal
139 proceeding into the auction, which will cause Ameren to not execute SFCs with
140 the winning bidders. There is no question that the Commission should review the
141 results of each auction upon its completion. However, in order for the auction
142 suppliers to have the utmost confidence that the auction results will be approved if
143 the auction process is followed, the scope of the Commission's review should be
144 more specifically defined than is provided in Rider MV Original Sheet 27.028.
145 CCG suggests that the Commission state that the post-auction review will be
146 focused on ensuring that the approved auction process was followed and that there
147 were no anomalies in the bids or process that would call into question the
148 competitiveness of the bids received. This is the kind of information that should
149 be reflected in the Auction Advisor's Confidential Report to the Commission. It
150 is reasonable for the Commission to define its post auction review in this manner
151 because it will have already done its most crucial review of the auction process
152 and mechanics as part of this proceeding. In order to provide potential auction
153 suppliers with confidence that the auction will result in executed SFCs with the

154 winning bidders—and, hence, maximize auction participation and
155 competitiveness—Original Sheet 27.028 of Ameren’s Rider MV filing should be
156 modified to reflect the scope of the post auction review as outlined above.

157 **Q. DOES THE EXPERIENCE IN OTHER JURISDICTIONS PROVIDE ANY**
158 **GUIDANCE AS TO THE SCOPE OF COMMISSION REVIEW?**

159 **A.** The recent decision of the New Jersey Board of Public Utilities approving the
160 recent New Jersey auction results (New Jersey BPU Docket No. EO04040288,
161 2/16/05, pp. 3-4, attached as CCG Exhibit 1.1) provides some guidance as to what
162 the Commission should look at in its review of the auction results. In that order,
163 the New Jersey BPU indicates that its review focused on the mechanical elements
164 of the auction, for instance, whether there were informational, procedural, or
165 technological problems with the auction. The New Jersey BPU also considered
166 whether there was any evidence of collusion, gaming or market anomalies that
167 would call into question the competitiveness of the bidding process. CCG
168 encourages the Commission to conduct its review of the auction results in a
169 similar fashion.

170 **Q. DOES CCG HAVE ANY CONCERNS WITH THE THREE BUSINESS**
171 **DAY PERIOD FOR THE COMMISSION TO APPROVE THE AUCTION**
172 **RESULTS?**

173 **A.** Regulatory commissions in other jurisdictions that have held auctions similar to
174 what Ameren proposes, for instance, the Public Utilities Commission of Ohio and
175 the New Jersey Board of Public Utilities, have reviewed and rendered a decision
176 on their auction results within two business days of the auction being completed.
177 With respect to the importance of certification timing, the New Jersey Board of
178 Public Utilities has observed:

179 Paramount among the actions that need to be taken is prompt certification
180 of the auction results. Because of the volatility of the electric markets,
181 bids cannot remain valid for any prolonged period of time. If bidders
182 perceive that there may be a delay in certifying the results the additional
183 risk to bidders will show itself through higher prices. Therefore the Board
184 will commit to addressing the auction results by the end of the second full
185 calendar day [which has since been changed to second business day] after
186 the calendar day on which the auction closes. (New Jersey BPU Docket
187 No. EX01050303, 12/10/01, p. 28, attached as CCG Exhibit 1.2)

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With a shorter review and approval window, suppliers will be able to reduce the risk premium component of their bids that accounts for the risk of energy market price movements between the completion of the auction and the approval of the auction results. Reducing this risk premium will ultimately result in lower costs to bundled service customers. Given that, CCG encourages the Commission to render its decision on the auction results in as expeditious manner as possible and to consider reducing the decision time period from three business days to no more than two business days.

Q. WHAT IS CCG’S CONCERN REGARDING THE FUTURE DELIVERY SERVICES RATE CASE THAT AMEREN CONTEMPLATES FILING?

A. Ameren has indicated that it intends to file a separate delivery services rate case (the “Rate Case”) either late this year or early next year in which Ameren will propose delivery service tariff rates that comport with the bundled service tariff rate classifications proposed in this docket. It is unclear to CCG at this time what impact, if any, the Rate Case will have on the generation component of the bundled rates paid by Ameren bundled service customers that are served with generation procured by Ameren via a Commission approved auction structure. It is CCG’s understanding at this point that Ameren intends the “rate prism” proposed in this docket to translate auction results into bundled generation rates to be the sole and exclusive translation mechanism (in the form in which it is ultimately approved), and the Rate Case will have no impact on that mechanism. Nonetheless, the structure of the delivery service rates could have significant impact on how potential suppliers analyze the attrition risk associated with a particular rate class, especially if, for instance, bundled customers pay different delivery service rates than customers served by an ARES. Therefore, to the extent that there is a possibility that the Rate Case could have an impact on the generation component of the bundled rates paid by these customers, or that it is even unclear to the marketplace of potential auction suppliers what that impact may be, CCG urges Ameren and the Commission to undertake a procedural schedule for that Rate Case that will ensure that it is fully and finally decided well

219 in advance of the first Ameren auction. This will ensure that potential auction
220 suppliers have complete and accurate information on how the auction results will
221 be translated into the generation component of the bundled rates paid by bundled
222 service customers in order to properly assess attrition risk in preparing their
223 auction bids.

224 **Q. DOES CCG HAVE ANY COMMENTS ON THE FORM BGS SUPPLIER**
225 **FORWARD CONTRACTS (“SFCs”) PROPOSED BY AMEREN?**

226 **A.** Yes, CCG has three suggestions that would improve the SFCs. First, the form
227 proposed SFCs contemplate that, where a BGS Supplier and Ameren are parties
228 to multiple SFCs, an event of default as to one SFC will cross default to other
229 SFCs between the parties. (see, e.g., Resp. Exh. 3.1 (proposed form BGS-FP
230 SFC), Sec. 5.1(xv)) Multiple SFCs will be netted together for the purpose of
231 “making credit, collateral, default and other decisions” (proposed form SFC,
232 Section 5.4.f) Section 5.4.b of the proposed SFCs states that, upon termination of
233 one SFC, the Non-Defaulting Party shall calculate a “Termination Payment” by
234 aggregating “Settlement Amounts” due under the affected agreement and any
235 other agreements between the parties. This language, when read with Section
236 5.1(xv), implies that, on an event of default as to one SFC, all SFCs between
237 Ameren and the affected BGS Supplier will be terminated and a single
238 Termination Payment will be calculated and paid. Section 5.4.e states, however,
239 that only “the Companies” (Ameren) will calculate a single Termination Payment
240 in the case of a termination. Although it is not abundantly clear and the language
241 is somewhat inconsistent, the proposed form SFC could thus be interpreted to
242 provide an asymmetrical cross default mechanism where Ameren, as a Non-
243 Defaulting Party, has the right to choose whether to cross default multiple SFCs in
244 the case where there is a BGS Supplier default as to one agreement, and, in that
245 case, which other SFCs to cross default. However, it does not appear that the
246 BGS Supplier has the same right when it is the Non-Defaulting party under one or
247 more SFCs. The proposed form SFCs language should be clarified to provide that,
248 upon the early termination of one of multiple SFCs between Ameren and a BGS
249 Supplier, all SFCs between the parties will be terminated and the Non-Defaulting

250 Party (not just Ameren) will calculate a single Termination Payment applicable to
251 all such agreements under Section 5.4.e. This modification will ensure that both
252 Ameren and the BGS Supplier are on equal footing as to the SFCs they enter and
253 that they will each be able to equally rely on the netting of multiple SFCs for the
254 purpose of “making credit, collateral, default and other decisions.” (proposed
255 form BGS SFC Section 5.4.f) To conform with the other changes CCG suggests,
256 the first and second sentences of Section 5.4.f should begin “The Parties” rather
257 than “The Companies.”

258 **Q. WHAT IS CCG’S SECOND SUGGESTION?**

259 **A.** CCG suggests two modifications to Section 15.14, Taxes, of the proposed form
260 SFCs. First, the following language should be added:

261 If new taxes are imposed on Energy or Capacity or any other component
262 of BGS-[FP] Supply after the date of this Agreement, within forty-five
263 (45) days of the final adoption of any such new taxes, the Companies will
264 notify the BGS-[FP] Suppliers that such new tax has been adopted, will
265 seek approval from the ICC to collect the new taxes from BGS-[FP]
266 Customers, and will provide the BGS-[FP] Suppliers with a copy of the
267 Company’s petition seeking such approval from the ICC. Upon receipt of
268 ICC approval of the collection of the new taxes from BGS-[FP]
269 Customers, the BGS-[FP] Supplier will be excused from liability for
270 payment of those new taxes.
271

272 This new proposed second paragraph of Section 15.14 appears in the New Jersey
273 BGS Supplier Master Agreement, after which the SFCs proposed by Ameren
274 were modeled. This language is important because it allows the ICC to determine
275 whether, in certain cases, new taxes can and should be passed through to BGS
276 Customers. This language provides potential BGS Suppliers with some assurance
277 that, in the event that new taxes are imposed that could be the responsibility of the
278 BGS Supplier, there is an avenue for the taxes to be properly passed on to the
279 ultimate end user if the ICC determines that it is appropriate to do so.

280 In addition, CCG recommends that, for technical clarity, the following
281 sentence be added to Section 15.14 of the proposed form SFCs: “Each Party, upon
282 reasonable request, shall provide the other Party with copies of any applicable

283 valid tax exemption certificates.” This language would ensure that each Party is
284 able to claim any tax exemptions to which it may be entitled under Illinois law.

285 **Q. WHAT IS CCG’S THIRD SUGGESTION?**

286 **A.** The second paragraph of Section 13.2, Risk of Loss and Changes in Market Rules
287 and Conditions, provides that the BGS Supplier shall be responsible for changes
288 in market rules or conditions that result in new or increased charges, whether
289 those changes occur “before the Delivery Points.” This language is unclear; if
290 Ameren intends the BGS Supplier to be responsible for new or increased charges
291 imposed before the Delivery Points, then the word “whether” should be stricken
292 to clarify this point. If Ameren intends this language to be “whether those
293 changes occur before *or after* the Delivery Points” (as the similar SFC proposed
294 by ComEd does), then this language would be inconsistent with the first sentence
295 of that same paragraph, which states that Ameren will be responsible for changes
296 in charges associated with delivery service or Network Integration Transmission
297 Service, both of which occur after the Delivery Points. If that is Ameren’s intent,
298 this inconsistency could lead to disputes between Ameren and a BGS Supplier as
299 to whether changes in charges or requirements downstream of the Delivery Point
300 are borne by Ameren or the Supplier. If it is Ameren’s intent to say “before or
301 after the Delivery Points,” this section should be clarified. As a starting point, the
302 Delivery Points should be the points of demarcation between Ameren and BGS
303 Suppliers as to which party bears the risk of changes in market rules or
304 requirements. If Ameren wants the BGS Supplier to bear certain risks
305 downstream of the Delivery Point, those risks should be spelled out specifically in
306 the form SFCs.

307 **Q. DOES CCG HAVE ANY FINAL SUGGESTIONS WITH RESPECT TO**
308 **THE SFC?**

309 **A.** Yes. In reviewing the SFC, CCG has noted several potential inconsistencies
310 which, in its view, lead to a final suggestion that the Commission should consider
311 establishing another working group process to review the SFC and clarify several
312 aspects. The purpose of the working group would not be to reallocate the
313 contractual rights and responsibilities that exist in the contract, but rather to

314 clarify those rights and obligations. This is especially important given that the
315 SFC will operate in the MISO markets, and as market changes occur or as market
316 procedures are clarified, it may be necessary and appropriate to revise the SFC
317 accordingly. For instance, the SFC defines capacity and resource adequacy
318 requirements as separate terms and further states, in Section 2.1.c(iv), that the
319 Companies will procure Network Integration Transmission Service and will be
320 the Load Serving Entities. To the extent that suppliers are expected to identify
321 resources to meet capacity and/or resource adequacy requirements while at the
322 same time the Companies must designate resources to meet their obligations as
323 Network Integration Transmission Service customers and/or as the Load Serving
324 Entities, the SFC includes only a limited process (in Section 2.1.b(viii) to address
325 how this will occur. In addition, in Section 2.1.b(iv) should be clarified to
326 indicate that the supplier is not responsible for changes related to Network
327 Integration Transmission Service. As currently worded, the reference to
328 Appendix C, which includes Network Integration Transmission Service and the
329 subsequent specific exclusion of Network Integration Transmission Service,
330 causes uncertainty as to the supplier's obligations, which should not include any
331 responsibility as a result of changes in Network Integration Transmission Service.
332 In addition, the working group can also ensure consistency between ComEd's and
333 the Companies' respective SFCs, to the extent appropriate given the difference in
334 market structures between PJM and MISO.

335 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

336 **A.** Yes.

CCG EXHIBIT 1.1

New Jersey BPU Docket No. EO04040288

CCG EXHIBIT 1.2

New Jersey BPU Docket No. EX01050303, 12/10/01