

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Central Illinois Light Company d/b/a AmerenCILCO,	:	
	:	
	:	No. 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	:	
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Central Illinois Public Service Company d/b/a AmerenCIPS	:	No. 05-0161
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Proposal to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV	:	
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Illinois Power Company d/b/a AmerenIP	:	No. 05-0162
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Proposal to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV	:	(Consol.)
	:	

DIRECT TESTIMONY OF

PHILIP R. O’CONNOR, PH.D.
CONSTELLATION NEWENERGY, INC.

**ON BEHALF OF THE
COALITION OF ENERGY SUPPLIERS**

COMPRISED OF:

**CONSTELLATION NEWENERGY, INC.
DIRECT ENERGY SERVICES, LLC
MIDAMERICAN ENERGY COMPANY
PEOPLES ENERGY SERVICES CORPORATION
U.S. ENERGY SAVINGS CORP.**

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1 **I. INTRODUCTION**

2 **Q. Please provide your name, employment, address and background relevant to**
3 **your appearance as a witness in this proceeding.**

4 A. My name is Philip R. O'Connor and I am employed by Constellation NewEnergy,
5 Inc. ("NewEnergy"), an intervening party in this proceeding, as Vice-President
6 for the Illinois Market. NewEnergy is licensed to operate as an alternative retail
7 electric supplier ("ARES") in Illinois, and is located at 550 W. Washington Blvd.
8 in Chicago. I formerly served as Chairman of the Illinois Commerce Commission
9 ("Commission"), and over the past decade and a half, I have testified in a number
10 of proceedings before the Commission, both with respect to retail open access
11 issues and other matters. My resume is attached to my testimony as CES Exhibit
12 1.1.

13
14 **Q. On whose behalf are you testifying?**

15 A. I am testifying on behalf of the Coalition of Energy Suppliers ("CES" or the
16 "Coalition"). The members of CES are NewEnergy, Direct Energy Services, LLC
17 ("Direct"), MidAmerican Energy Company ("MidAmerican"), Peoples Energy
18 Corporation ("Peoples") and U.S. Energy Savings Corp. ("U.S. Energy").

19
20 This *ad hoc* coalition has been formed to propose measures to foster the
21 development of a competitive retail electric market in Illinois. The positions set
22 out in this direct testimony represent the positions of the Coalition as a group, but
23 do not necessarily represent the positions of individual CES member companies.

24 However, each member of the Coalition believes that the positions set forth in this
25 testimony represent an improvement over the competitive procurement proposal
26 advanced by Central Illinois Light Company d/b/a AmerenCILCO, Central
27 Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company
28 d/b/a AmerenIP (collectively, “Ameren”) in this proceeding. Additionally, some
29 members of the CES believe that further changes are necessary to improve
30 Ameren’s procurement proposal. Those Coalition members are filing direct
31 testimony on their own behalf in support of their additional proposed changes.

32

33 **Q. What is the purpose of your testimony?**

34 A. The main purpose of my testimony is to explain the specific recommendations of
35 the Coalition to improve Ameren’s proposed power procurement method. I also
36 will summarize the testimony of other CES witnesses on related matters.

37

38 First, I will address the reasons that CES supports the auction concept for the
39 Ameren service areas at this time. Second, I will walk through several of the
40 Coalition’s recommendations. Third, in order to place Ameren’s proposal (and
41 the Coalition’s recommendations) into the proper context, I will address
42 competitive market and regulatory developments relevant to the Commission’s
43 considerations. Finally, I will describe the relevance to the Ameren procurement
44 proceeding and to subsequent delivery service proceedings of the Memorandum
45 of Understanding (“MOU”) entered into by CES, its members, and certain other
46 parties with ComEd.

47 **II. RECOMMENDATIONS REGARDING AMEREN'S PROPOSAL**

48 **Q. As the Commission examines Ameren's competitive procurement proposal,**
49 **are there general considerations that the Commission should keep in mind?**

50 A. Yes. First, the Commission, market observers and participants in the Illinois
51 retail electric market recognize that competition has not yet flourished in the
52 Ameren service areas, in contrast to the choice market for larger commercial and
53 industrial customers in the ComEd service area. Thus, there should be a general
54 presumption that approaches and policies that have worked to benefit those
55 customers inside the ComEd service area should be translated into the Ameren
56 service areas. Second, along the same lines, the Commission should seek to take
57 advantage of opportunities to make similar or uniform policy and implementation
58 decisions for the Ameren and ComEd procurement models. The Commission has
59 recognized that such uniformity would benefit customers throughout the state.
60 (*See ILL. COMM. COMM'N, Competition in Illinois Retail Electric Markets in*
61 *2004, Report to the General Assembly dated April 2005 at 3 ("convergence [of*
62 *the Ameren and ComEd market platforms] will provide further benefits for retail*
63 *customers in Illinois.").*) Although the Administrative Law Judge denied Staff's
64 Motion to Consolidate this proceeding with the ComEd proceeding, the Ruling
65 properly noted that "a coordinated approach" between the two proceedings was
66 appropriate. (*See ALJ Ruling dated April 12, 2005 at 3.*) Thus, there should be a
67 presumption that policy and implementation issues should be decided similarly, if
68 not uniformly, for Ameren and ComEd.

69

70 **Q. Why does the Coalition believe that it would be appropriate for the**
71 **Commission to approve an auction-based methodology for Ameren to**
72 **procure its power following the mandatory transition period?**

73 A. Overall, the auction procurement method proposed by Ameren is similar to the
74 auction process that has been tried and tested in New Jersey; that experience in
75 New Jersey generally suggests that Illinois reasonably could adopt an auction
76 methodology, tailored to the Illinois electric markets.

77

78 Also, it is worth noting that the topic of the post-transition procurement method
79 was analyzed during the Commission's Post-2006 Initiative (the "Initiative")
80 workshops that were held throughout 2004. The results of those discussions
81 indicate that the auction approach, in general, has the fullest complement of the
82 desirable procurement characteristics that were identified by the Initiative
83 participants. Coalition members participated in the Initiative's Procurement
84 Working Group, and the framework for the views of the CES is informed by the
85 members generally subscribing to the efficacy of an auction procurement method.
86 None of the other procurement models analyzed by the Procurement Working
87 Group possessed as many of the eighteen desirable attributes as the type of
88 general auction approach proposed in this proceeding. In that respect, the filing
89 of an auction procurement method by Ameren should not be regarded as the result
90 solely of work by Ameren, but rather as a general method that was developed in
91 the cooperative and open atmosphere of the Post-2006 Initiative's Working
92 Groups and the aftermath.

93 **Q. Are there specific features of an auction approach that make it adaptable for**
94 **the Illinois electric market?**

95 A. Yes. The auction approach has a number of specific characteristics that make it a
96 reasonable approach for Illinois at this time. Importantly, the auction approach
97 addresses the following four (4) key concerns with respect to Illinois:

98
99 **First**, a properly designed auction method, by reason of its full
100 requirements tranche structure, should serve to mitigate the potential
101 effects of concentration of ownership of certain types of generation. The
102 Commission Staff Report on the Post-2006 Initiative issued in December
103 2004 describes the value of a vertical tranche auction structure in
104 mitigating market structure problems. At page 12 of that report, the
105 Commission Staff opines that, “In terms of dealing with market power and
106 affiliate abuse concerns, the transparency of the vertical tranche auction is
107 its central strength.” (ILL. COMM. COMM’N, *The Post 2006 Initiative:*
108 *Final Staff Report to the Commission*, December 2, 2004 available at
109 <http://www.icc.illinois.gov/ec/ecPost.aspx>.)

110
111 **Second**, the design of the auction should be expected to attract generation
112 owners as well as financial firms, thus expanding the number of
113 competing wholesale participants.

114

115 **Third**, since the resulting auction price, by definition, would represent the
116 costs of utility generation supply, there should be little question about the
117 inclusion of these costs as a component of bundled rates and the Power
118 Purchase Option (“PPO”). The Commission is familiar, as are state utility
119 commissions around the country, with the incorporation of wholesale
120 supply costs into retail service rates. The auction is merely a method of
121 acquiring those supplies and in this proceeding that method would be
122 designed subject to Commission approval.

123

124 **Fourth**, because a variety of risks will be borne by the competing auction
125 participants, the auction process should simplify the Commission’s
126 evaluation of utility cost of capital in the subsequent delivery service rate
127 cases Ameren will file.

128

129 **Q. Is using a properly designed auction as a procurement methodology**
130 **consistent with the Illinois Public Utilities Act?**

131 A. Yes. It is reasonable to expect that a properly designed auction will produce
132 wholesale energy prices that reflect market conditions at the time the auction is
133 conducted and should also help to keep the costs of the utility’s operation of the
134 delivery network free of commodity-related risk and cost. The auction method
135 also should improve the calculation of the market value energy charge (“MVEC”)
136 component of the PPO rates. The Electric Service Customer Choice and Rate
137 Relief Law of 1997 (“Choice Law” or “1997 Choice Law”) indicates that, in the

138 event that utilities do not own generation and must acquire supply in the
 139 wholesale market, the price of the wholesale supply should have a reasonable
 140 relationship to the costs indicated by the Commission-approved MVEC
 141 methodology. The Choice Law provides that the MVEC methodology can rely on
 142 a variety of inputs, including contracts applicable to the utility’s service areas.
 143 The auction would yield such energy contracts.

144
 145 **Q. Which specific implementation issues of significance should be addressed in**
 146 **order to better assure the success of the proposed auction procurement**
 147 **approach for Ameren?**

148 A. There are six (6) main areas of implementation that I will address. These are:

- 149 • **The initial auction should be held in May 2006** as Ameren has
 150 proposed.
- 151 • **The customer groupings proposed by Ameren should be revised.**
 152 Specifically, Ameren’s proposed grouping of all residential and business
 153 load below 1 MW of demand together into the same Basic Generation
 154 Service – Fixed Pricing (“BGS-FP”) customer grouping should be revised
 155 through a bifurcation at the 400 kW level. CES proposes that those
 156 customers with peak demands between 400 kW and 1 MW should be
 157 offered a one-year retail product, based on a single-year wholesale auction
 158 similar to that offered to customers with demands over 1 MW. This one-
 159 year product should be the automatic default service for the 400 kW to 1
 160 MW customers and not require a contract. CES members Direct Energy

161 Services, LLC and U.S. Energy Savings Corp. believe that further
162 revisions in the Ameren customer groupings are desirable and justified and
163 will address those matters in separately filed testimony.

164 • **The enrollment window for customers over 1 MW should be revised.**
165 Customers with demand over 1 MW should have a 75-day enrollment
166 window for the proposed single-year, fixed-price product, consistent with
167 the PPO enrollment window that has been in effect and functioning well in
168 the ComEd area for the past several years. Ameren’s proposed
169 considerably shorter 30-day window should be rejected in favor of a
170 proven 75-day window.

171 • **Ameren’s translation tariff must be revised to address migration risk**
172 as it would not allocate migration risk premium to recognize differing
173 migration potential across customer classes and thus will tend to shift the
174 cost burden of that premium to smaller customers.

175 • **The Supply Procurement Adjustment Charge (“SPA”) should be**
176 **revised** to properly reflect all direct and indirect costs related to Ameren
177 administering the new BGS-FP, Basic Generation Service – Large
178 Customer Fixed Pricing (“BGS-LFP”), and Basic Generation Service –
179 Large Service Real-Time Pricing (“BGS-LRTP”) products. Further,
180 uncollectible expenses should be accounted for separately between
181 “delivery services”-related uncollectible expenses and “energy”-related
182 uncollectible expenses, and charged to customers accordingly.

- 183 • **Ameren’s proposal to assess a charge solely upon customers of ARES**
184 **and other RESs (collectively, “RESs”) over 1 MW should be rejected**
185 **as anti-competitive and unduly discriminatory.** Ameren, though its
186 proposed “Rider D – Default Supply Service Availability – Large”
187 surcharge, seeks to impose a supply-related charge upon all customers
188 over 1 MW who are not using Ameren’s auction-acquired supply; in
189 effect, creating a supply-related non-bypassable delivery service charge.

190

191 These issues also are addressed to varying degrees in CES Exhibit 2.0, the Direct
192 Panel Testimony of CES witnesses Mario Bohorquez and Wayne Bollinger, and
193 in CES Exhibit 3.0, the Direct Panel Testimony of CES witnesses John L.
194 Domagalski and Richard S. Spilky.

195

196 **III. THE INITIAL AUCTION SHOULD BE HELD IN MAY 2006**

197 **Q. What have Ameren and ComEd proposed regarding the timing of their**
198 **respective initial auctions?**

199 A. The utilities have expressed an interest in avoiding an auction during the summer
200 months when it is possible that temporary weather conditions might have an
201 inordinate impact on the longer term market. Ameren has proposed that the first
202 auction to set prices and procure supplies for the post-transition period occur in
203 May 2006. ComEd has proposed September 2006 for the initial auction. Despite
204 these two different proposals, the utilities have also expressed a belief that the
205 Commission should choose one or the other date so that both auctions occur at

206 relatively the same time or in close proximity to one another. CES agrees with
207 Ameren and has proposed in the ComEd proceeding that both utilities conduct an
208 initial auction in May 2006.

209

210 **Q. Why does CES recommend a May 2006 date for the initial auction?**

211 A. There are at least three (3) independent reasons why the Coalition urges the
212 Commission to designate May 2006 for the initial auction for both Ameren and
213 ComEd. All of these reasons are directed toward providing increased flexibility
214 and options for the Commission, for regulators and policymakers and, most
215 importantly, for customers.

216

217 **First**, customers should be the main focus of this proceeding, and Illinois public
218 policy treats the opportunity to exercise choice as a key element in benefiting
219 customers. That being the case, a May 2006 date for the initial auction would
220 provide additional time for customers below 1 MW of demand to assess their
221 options prior to the end of the mandatory transition period on January 1, 2007.
222 The auction structure likely will require important education and study on the part
223 of these customers. A May 2006 auction date would be consistent with promoting
224 opportunities for customer choice.

225

226 **Second**, although the auction approach has been used in New Jersey and therefore
227 within the PJM Interconnection, LLC (“PJM”), the application of the model to a
228 new region within PJM and to MISO could involve any number of details that

229 deserve attention. The implementation of this new auction structure suggests that
230 a May 2006 initial auction date is preferable, as it allows for the auction to be
231 delayed to September if need be. For example, if systems are not ready or if the
232 Commission or auction manager decides that there are potential problems with the
233 May bidding, delay may be required. On the other hand, a September date for the
234 initial auction leaves little room for rectifying any problems if discovered late in
235 the game.

236

237 **Third**, deadlines work. By setting a May 2006 initial auction date, which is
238 nearly a year from now, the Commission will be encouraging a time frame that
239 will help move all parties in the direction of defining the post-transition rules of
240 the game, thus bringing more certainty to the environment for customer decision-
241 making. This would be consistent with the goal of the MOU that ComEd has
242 entered into with the Coalition and others. Further, the success of initial auctions
243 in Illinois may be affected by the membership of ComEd and Ameren in two
244 different Regional Transmission Organizations (“RTOs”). PJM, the RTO to
245 which ComEd belongs, has had considerable experience in accommodating the
246 New Jersey auctions and also has shown a willingness and ability to
247 accommodate decisions by states to provide for open access at the retail level.
248 The Midwest Independent System Operator (“MISO”), the RTO to which Ameren
249 belongs, however, has not had experience with auctions and has not yet fully
250 accommodated those states, such as Illinois, that have chosen to permit open
251 access at retail. By setting a prospective May 2006 date for the initial auction, the

252 Commission will be taking an important step in properly focusing MISO on the
253 need to accommodate the auction and to coordinate with PJM if necessary. If
254 there remain any RTO-based obstacles to an auction at that time, then the option
255 for a delay to September 2006 from May 2006 can be exercised for the initial
256 auction date.

257

258 **Q. Is it essential that both the Ameren and ComEd auctions be held**
259 **simultaneously?**

260 A. No. If the Commission chose to set the initial auctions for May 2006, for
261 instance, it is entirely possible that one auction could commence and conclude
262 shortly before the other.

263

264 **IV. THE CUSTOMER GROUPINGS PROPOSED BY AMEREN SHOULD BE REVISED**

265 **Q. Please describe how Ameren has proposed to offer different products to**
266 **different customer groupings.**

267 A. Ameren has proposed establishing two customer groupings. **First**, residential
268 customers, small business customers, and other business customers with demands
269 less than 1 MW would be grouped together for a one-year fixed-price offering
270 labeled BGS-FP, which would be based on multi-year, laddered auction products.
271 BGS-FP would be a default product that would not require a customer to make an
272 affirmative election or sign any contract with Ameren. The customers under 1
273 MW offered the BGS-FP would be broken into several customer classes for
274 purposes of “translation” of the auction price into retail rates. However, unlike

275 the ComEd translation tariff, the Ameren proposal would not allocate migration
276 risk premium in a manner intended to recognize differing migration potential
277 across customer classes.

278

279 **Second**, all other customers, those over 1 MW of demand, would be grouped
280 together for a one-year, fixed-price offering labeled BGS-LFP. Customers
281 eligible for BGS-LFP would be required to make an affirmative election and enter
282 into a contract within a 30-day sign-up window. Any BGS-LFP eligible customer
283 not having made an election for RES service or for BGS-LFP would default to
284 BGS-LRTP, an hourly, real-time priced product. Additionally, any customers,
285 including residential and small business could elect the hourly service.

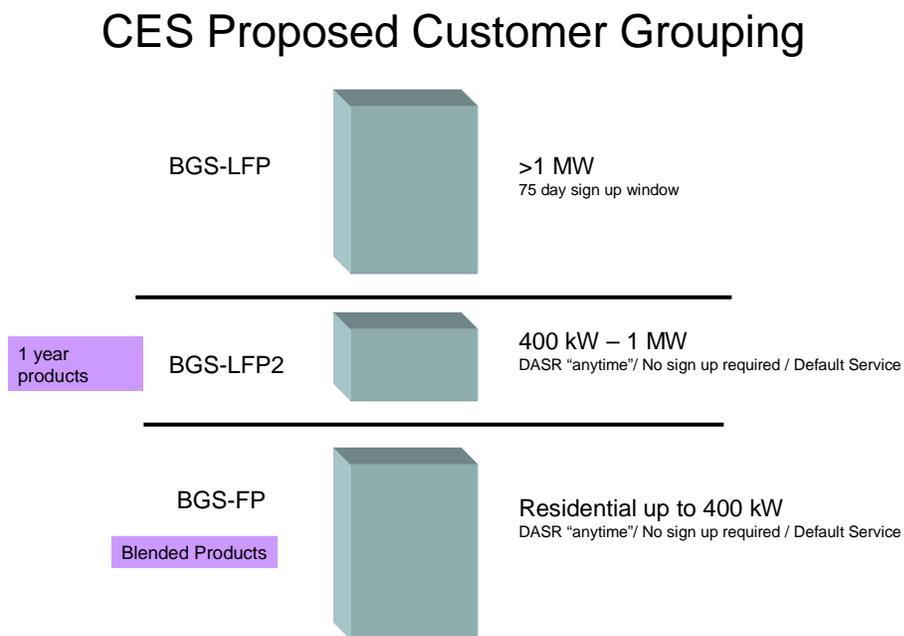
286

287 **Q. Please describe how Ameren’s proposed customer groupings should be**
288 **revised.**

289 A. The Coalition recommends that the BGS-FP customer grouping should be
290 bifurcated at the 400 kW level. Larger business customers within the 400 kW
291 to 1 MW demand group would be separated from all those below that level and
292 offered a one-year, fixed price product akin to that offered to customers over
293 1 MW in demand, that we can call “BGS-LFP2.” However, that product would
294 be an automatic default product for customers with less than 1 MW in demand,
295 not requiring an affirmative election.

296

297 Under this approach, the small customer grouping, residential and smaller
 298 commercial retail customers with peak demands up to 400 kW, would continue to
 299 be offered the one-year, fixed-price product based on the blended multi-year,
 300 laddered auction product. The following chart, which is reproduced as CES Ex.
 301 1.2 and attached to my testimony, illustrates the customer groupings under the
 302 Coalition’s approach:



303
 304 **Q. What would be the tangible difference between Ameren’s proposed auction**
 305 **products and the Coalition’s proposal?**

306 A. Under the CES proposed revision, customers between 400 kW and 1 MW of
 307 demand would be better aligned with customers over 1 MW whose characteristics
 308 and migration potential are more in keeping with their own. The tangible
 309 difference between Ameren’s proposed BGS-LFP retail product and the
 310 Coalition’s proposed “BGS-LFP2” retail product for customers between 400 kW

311 and 1 MW customers is that, under the Coalition's proposal, the customers over
312 1 MW still would be required to affirmatively elect the service, while those under
313 1 MW would not. Thus, the BGS-LFP2 retail product would be the default
314 service whereas the default product for customers over 1 MW would be the
315 hourly product associated with BGS-LRTP.

316

317 **Q. Is this proposal similar to the proposal that the Coalition is advocating that**
318 **ComEd adopt?**

319 A. Yes. In the ComEd proceeding, the Coalition likewise has advocated conducting
320 an auction for customers with peak demands of between 400 kW and 1 MW. As
321 discussed in greater detail below and in the Direct Panel Testimony of CES
322 witnesses Domagalski and Spilky, establishing this additional auction is even
323 more important for Ameren if it is not required to provide for some allocation of
324 migration risk premium across customer classes within the BGS-FP grouping.
325 (*See* CES Ex. 3.0 at 84-216.)

326

327 **Q. Under the Coalition's proposal, how many customers would be served under**
328 **each of the proposed products?**

329 A. According to Ameren, as of December 31, 2004, in round numbers, the group that
330 would be served with the multi-year, laddered wholesale product would be
331 residential and business customers under 400 kW of demand, accounting for
332 about 1,201,000 customers, of which about 145,000 are non-residential. This
333 group accounts for about 17,600 GWh annually or 49% of total Ameren system

334 load. There are 855 customers in the group between 400 kW to 1 MW of
335 demand, accounting for over 2,000 GWH annually or about 6% of total Ameren
336 system load. Thus, the Coalition's proposal would shift a little over 6% of total
337 Ameren system load from the multi-year, laddered wholesale product to a single-
338 year, wholesale product.

339

340 **Q. What principles suggest that the Commission should revise Ameren's**
341 **proposal along the lines you have proposed?**

342 A. Revising Ameren's customer groupings as proposed by the Coalition would better
343 align the customer groupings with the following:

344 • The realities of the current competitive market in Illinois, in which
345 customers with peak demands of over 400 kW have shown a considerably
346 greater propensity to switch than have those below that level. This is
347 confirmed not only by data from the Ameren service areas but especially
348 by the data from the ComEd service area (which likely better
349 approximates the post-transition era in Ameren than Ameren's own
350 transition period switch data).

351 • Facilitating multi-year supplies in the auction, by allowing wholesale
352 suppliers to focus more precisely upon the costs and risks associated with
353 serving residential and smaller business customers; and

354 • Achieving greater precision in the allocation of migration risk premiums
355 among customers directly in the auction *rather* than through the inherently
356 problematic translation Prism.

357 **Q. How would the Coalition’s revision to the proposed customer grouping better**
358 **align the groups with current market realities?**

359 A. Experience so far indicates that customers in the proposed new BGS-LFP2
360 customer grouping have had a greater appetite for choice than have customers
361 below that level. The switching statistics in both the Ameren and ComEd service
362 areas are instructive on this point as is the business experience of RESs. In fact,
363 as discussed below, the data and experience in the ComEd service area during the
364 transition period likely are more instructive than even Ameren’s own experience
365 to date. That is, given an appropriate ruling by the Commission in the instant
366 proceeding, competition likely will develop in the Ameren service areas after the
367 transition period to the same extent that it already has developed in the ComEd
368 service area.

369

370 **Q. What is the Coalition’s viewpoint on how competition has developed**
371 **throughout the transition period in the Ameren service territories?**

372 A. There are several reasons why, from the standpoint of retail competitive
373 providers, competition has failed to develop in the Ameren service territories.
374 None of these reasons should be new to the Commission, as most have been
375 recognized by the Commission in certain reports issued to the General Assembly
376 or raised in other dockets, and would include the following:

- 377 • Retail tariff terms and conditions and business practices that have acted to
378 impede the development of customer choice, such as:
- 379 ○ The inability of a RES to obtain all PPO pricing data elements,
380 including transmission and ancillary services and the daily load

381 profiles used in the AmerenIP service territory (since they change
 382 daily) makes modeling of the MVI extremely difficult for RESs.

383 ○ Lack of timely response to RES and/or customers in providing the
 384 PPO calculations which determines their CTC and PPO eligibility;

385 ○ A very short window to shop, especially with regard to the multi-year
 386 transition charges in AmerenIP;

387 ○ Transition Charge and PPO information was not available on
 388 AmerenIP’s website for all customers;

389 ○ Lack of uniformity in switching processes and business practices
 390 related to obtaining the customer data necessary to serve retail load;

391 ● Transmission reservation policies and practices that have acted to impede the
 392 development of customer choice; and

393 ● Extremely onerous energy imbalance provisions.

394

395 The lack of competitive development in the Ameren service territories is neither
 396 merely a chance result nor the simple effect of low bundled rates in those service
 397 areas. Rather, much of the difference between competitive development in the
 398 ComEd service territory versus development in the territories of Ameren derives
 399 from explicit utility policies and practices. Although Ameren has made some
 400 progress recently to address some of these issues, the lack of competition in the
 401 Ameren service areas, combined with the reasonable recommendations herein
 402 provide a compelling case for the Commission to impose conditions upon its
 403 approval of Ameren’s proposal in the instant proceeding.

404

405 **Q. Should the Commission be concerned about the lack of competition in the**
 406 **Ameren service territories as it considers Ameren’s proposal?**

407 A. Yes. After over five (5) years of customer choice implementation, the instant
408 proceeding provides the Commission with an opportunity to bring the benefits of
409 both wholesale and retail competition to customers in the Ameren service
410 territories. Acting now is necessary so that consumers experience exactly what
411 the General Assembly intended - a meaningful transition to vibrant competitive
412 wholesale and retail markets. Whereas ComEd has worked throughout the
413 transition period to develop tariff proposals and business practices that ostensibly
414 support open access and simplified processes for RESs, the Ameren Companies,
415 by contrast, have maintained business practices that hinder the development of
416 competition in their respective service territories. The end of the transition should
417 also be the end of institutional obstacles, intended or inadvertent, that frustrate
418 customer choice. No doubt, the Ameren delivery services case will present a key
419 opportunity to demolish these obstacles once and for all.

420

421 **Q. Please comment on the switching statistics in the Ameren service territories.**

422 A. Much of what can has been represented as competitive development in the
423 Ameren service territories has actually been legacy special contracts and the PPO
424 enlistment. RESs are directly serving only a handful of very large customers in
425 the downstate service territories. Illinois Power's PPO is a good illustration of the
426 difficult and complex process customers face in attempting to effectuate retail
427 choice. As a general matter, customer choice for medium industrial and
428 commercial class customers in the IP service territory has been inconsequential.
429 The Commission's reports and switching statistics illustrate this point – as of the

430 end of 2004, just over 90% of IP's delivery services customers under 1 MW were
431 taking PPO service (926 of 1,021) and about nearly 60% of IP's large-user
432 delivery services customers had switched to the PPO (53 of 89). (See ILL. COMM.
433 COMM'N, *Competition in Illinois Retail Electric Markets in 2004*, April 2005 at 6,
434 7.) These data indicate that in Ameren the PPO has played a different role than in
435 ComEd. In Ameren the PPO has been a lower priced offering in a climate
436 inhospitable to the entry of new providers. It should be noted as well that
437 Ameren's response to CUB Data Request 1.04 permits a calculation that of the
438 total non-PPO switched load within Ameren-IP, affiliates of the utility serve 95%
439 of all usage as of December 2004. Nonetheless, this does demonstrate that
440 customers are willing to actively seek out better prices even when the options are
441 limited, as they have been by Ameren's flawed market design.

442

443 **Q. Have there been past recommendations for how to foster the development of**
444 **competition in the Ameren service territories that would be instructive for**
445 **the Commission?**

446 A. Yes. Since the Commission began the process of implementing the Customer
447 Choice Act, numerous recommendations have been advanced for changes in tariff
448 provisions and business practices of the Illinois utilities designed to make the
449 "rules of the game" more uniform and consistent. However, the Commission thus
450 far has chosen not to mandate statewide uniformity for existing retail and
451 wholesale business practices. (See generally ICC Docket Nos. 99-0117; 00-0490;
452 01-0423; and Docket Nos. 02-0656, 02-0671, 02-0672 (consol.).)

453 **Q. Why do you believe it is appropriate for the Commission to look to the**
454 **experience within ComEd as a predictor of post-transmission switching**
455 **appetite for customers inside the Ameren service areas?**

456 A. Understandably, because there have been so many obstacles to choice in the
457 Ameren service areas during the transition period, Ameren switching data are not
458 quite as instructive for anticipating post-transition conditions in Ameren as are the
459 transition period experiences in ComEd. If the Ameren companies had embraced
460 customer choice in the same manner that ComEd did, we would have seen much
461 more customer switching in the Ameren service areas during the transition period
462 and greater participation in the Ameren service areas by RESs active in the
463 ComEd service area. With the end of transition charges, Ameren's integration
464 into MISO, appropriate decisions by the Commission in the instant proceeding,
465 and continued Commission oversight and intervention as necessary, we are
466 confident that similar switching levels can be achieved in the Ameren service
467 areas.

468

469 **Q. Please discuss the switching information provided by ComEd in ICC Docket**
470 **No. 05-0159 as it relates to how the Commission should address the**
471 **migration risk premium associated with Ameren's procurement proposal in**
472 **the instant proceeding?**

473 A. In the ComEd proceeding, ComEd witnesses Crumrine and Alongi presented a
474 helpful breakdown of switching information by classes of customers below 1 MW
475 of demand. (See ComEd Ex. 7.6, attached to this testimony as CES Ex. 1.3) As

476 of December 31, 2004, only about 37% of load between 400 kW and 1 MW in the
477 ComEd service territory was still served through bundled rates while 77% of
478 business load under 400 kW was still served on bundled service. In response to
479 CUB Data Request 1.04, Ameren provided similar information, which showed
480 that switching among Ameren area business customers from 400 kW to 1 MW
481 was substantially greater than among Ameren area business customers under 400
482 kW. In the group of business customers under 400 kW, about 93% of load was
483 still served through bundled service in December of 2004 while in the group from
484 400 kW to 1 MW, about 77% of load was still being served under bundled rates..

485

486 **Q. Would it be appropriate for the Commission to re-examine the customer**
487 **groupings following the initial auction?**

488 A. The issue of what products should be offered to which customers should be a
489 topic for thoughtful consideration by the Commission in the annual post-auction
490 collaborative effort along with other issues. The Commission has been well-
491 served by its ability to respond to various market developments, and it should
492 continue to evaluate the products and customer class demarcations to look for
493 further opportunities to promote the development of the competitive retail electric
494 market in Illinois.

495

496 **Q. How would your proposal better align the auction products with Ameren's**
497 **existing customer classifications?**

498 A. Since the commencement of the mandatory transition period, we have seen the
499 relevance of the 400 kW demand level as a workable threshold. ComEd, for
500 example, has used that demand level as the point at which interval metering was
501 required. And, as competition has developed, the 400 kW level became the
502 ComEd threshold above which customers would be assigned individual CTCs.
503 This, in turn, has allowed customers above 400 kW to enter into multi-year supply
504 arrangements with RESs to match the multi-year CTCs that were also made
505 available. As such, these customers could fix their supply contracts and CTCs
506 through the end of the transition period, thereby gaining the assurance of fixed
507 energy prices over an extended period.

508

509 In the Ameren areas, since there were four separate utilities in question, the
510 conventions across Downstate have varied.¹ However, the Ameren utilities have
511 utilized an even lower threshold for the imposition of interval metering
512 requirements. In general, customers below 400 kW of demand have been
513 required to have interval metering. For example, Ameren-CIPS requires that new
514 customers above 100 kW wishing to take delivery service must have interval
515 metering installed. Thus, at the 400 kW level the Commission can be assured that
516 interval metering is already in place and that there would be no new requirements
517 placed on customers.

518

¹ The four (4) Ameren utilities have since been collapsed into three in Illinois with the assignment of the AmerenUE customers in Illinois to AmerenCIPS.

519 **Q. How would this bifurcation better align the procurement process with the**
520 **objective of better assuring the auction's success?**

521 A. The prospects for a successful auction will likely improve if the 400 kW to 1 MW
522 group is separated from the groups below 400 kW for the initial multi-year
523 laddered auction by focusing the auction's capacity for multi-year, laddered
524 contracts on residential and small business customers. With both Ameren and
525 ComEd, the Commission should adhere to the basic principle of assuring that
526 residential and smaller business customers should be the focus of benefits that
527 may accrue from multi-year wholesale auction. It should not be taken for granted
528 that the multi-year, laddered wholesale products will be subscribed to in an
529 Ameren auction to the extent desired to accommodate the intended result for all
530 customers up to 1 MW. Any shortfall dilutes the intended beneficial impact for
531 residential and small business customers.

532

533 **Q. How would this bifurcation align the procurement process with ComEd's**
534 **procurement proposal?**

535 A. Bifurcation would lead to greater uniformity between the procurement process of
536 Ameren and ComEd. Since Ameren and ComEd have both recognized the value
537 in proposing a similar competitive procurement process based upon the New
538 Jersey BGS auction, it would follow that the Commission should strive to
539 minimize the differences between the two proposals. By the Commission
540 establishing a common and consistent demarcation line between the annual and

541 blended products across the state, customers and competitive suppliers will be
542 operating under a common set of rules.

543

544 **Q. Would the Coalition's BGS-LFP2 proposal deny customers the ability to**
545 **have multi-year price stability?**

546 A. Not at all. To the extent that business customers over 400 kW wish to have multi-
547 year price stability, they can easily secure such stability directly in the
548 competitive market through RESs, since the supply for serving those customers
549 can be secured through bilateral wholesale deals not subject to the auction
550 process. The experience of the past couple of years with multi-year CTCs in the
551 ComEd service territory illustrates that customers of this size have the ability to
552 evaluate and acquire multi-year contracts.

553

554 **Q. What impact would the Coalition's proposal have upon the rates for smaller**
555 **commercial and residential customers?**

556 A. The CES proposal should prove beneficial to residential and smaller business
557 customers. It is possible that some people may subscribe to the notion that the
558 inclusion of more business load in the auction for residential supply will somehow
559 moderate or otherwise benefit residential and smaller business customers.
560 However, the Ameren proposal would appear to shift whatever migration risk
561 premium there is for larger under 1 MW of demand customers in the BGS-FP
562 auction price to residential and smaller business customers. The proposed
563 Ameren Prism ignores migration risk even though the entire point of the Prism is

564 to eliminate class cross-subsidies and to conform pricing to cost causation. If
565 anything, the lumping of customers greater than 400 kW into the multi-year
566 laddered portion of the auction, as proposed by Ameren, is more likely to
567 confound and complicate the situation. The way to get rid of the kind of
568 inadvertent, administratively-imposed distortions that might be inherent in a
569 translation tariff allocation of migration risk premium is not to ignore it in the
570 construction of the Prism. A better solution is to draw the line for customer
571 classes such that the risk allocation can be better internalized in the auction
572 process itself.

573

574 **Q. How would the proposed bifurcation better align the auction with the goal of**
575 **avoiding unintended consequences?**

576 A. There is good reason to take steps to insulate residential and smaller business
577 customers from any splash-over of a risk premium associated with demonstrated
578 differences among customer groups in migration propensity, whether that splash-
579 over would be a function of the auction bid pricing or estimates made by Ameren
580 embedded in the translation methodology. It would be a cleaner approach to
581 assure that migration risk premiums are internalized into separate auction
582 products for full requirements service for the two groupings created under the
583 Coalition's bifurcation proposal. The proposed bifurcation would also result in
584 fewer complications and would minimize worries about cross-subsidies – a
585 problem that has often plagued the regulatory climate.

586

587 **Q. Please explain any problems associated with competitive declarations under**
588 **Ameren’s proposal.**

589 A. The issue of competitive declarations is yet another reason to bifurcate the BGS-
590 FP customer group. There is the possibility that over the next several years
591 customers in some of the Ameren service areas with demands over 400 kW will
592 achieve levels of competitive choice that might warrant competitive declarations.

593

594 Retaining the customers between 400 and 1 MW in the multi-year laddered, 3-
595 year rolling auction product group would present the genuine possibility that
596 wholesale commitments for later years would be “stranded” to the extent that
597 there were competitive declarations for such customers. That is, wholesale
598 suppliers for the relevant load could be in the position of having committed to
599 supplies at fixed prices for customers who have become ineligible for the
600 associated retail product, as those customers exit utility service and become
601 ineligible to return the blended rate. Understandably, wholesale suppliers could
602 have a strong incentive to oppose competitive declarations, even when the
603 statutory standard had been achieved for such declarations.

604

605 There is the further problem that Ameren is affiliated with generation and trading
606 entities that similarly might find themselves at risk of having “stranded”
607 wholesale commitments if a competitive declaration were made. It does not
608 require an overly active imagination to suggest that this presents the potential for
609 Ameren (the wires company) to be pressured by Ameren’s generation affiliate to

610 refrain from an otherwise warranted competitive declaration. The point here is
 611 not to suggest that any specific impropriety will develop, but rather to note that
 612 the auction process should not be designed so as to incorporate temptation. The
 613 auction should be designed so as to avoid creating unnecessary cross-pressures
 614 that could frustrate the potential for competitive declarations, which is one of the
 615 most important features of the Choice Law.

616

617 **Q. Would you anticipate significant additional costs associated with establishing**
 618 **the Coalition’s proposed BGS-LFP2 auction product?**

619 A. No. Since the single-year product offered to customers between 400 kW and
 620 1 MW would be identical to that offered to customers over 1 MW, except for the
 621 default and migration rules, there would seem to be few additional transaction
 622 costs associated with this additional auction product.

623

624 **V. MIGRATION RULES**

625 **Q. Please summarize the “migration rules” that Ameren has proposed.**

626 A. The three salient elements of the migration rules proposed by Ameren and
 627 deserving comments are:

- 628 • a “DASR anytime” rule by which BGS customers under 1 MW may choose to
 629 leave utility bundled service for RESs under DASR time lines that permit next
 630 meter cycle service;
- 631 • a one-year stay requirement for all customers returning to bundled service
 632 from RESs service; and

- 633 • a 30-day sign-up window for the annual BGS-LFP products offered to
634 customers over 1 MW.

635

636 **Q. Please comment on the “DASR anytime” rule.**

637 A. The Coalition endorses Ameren’s “DASR anytime” proposal for customers under
638 1 MW on BGS service. The opportunity for a customer, at any time during the
639 year, to depart from the fixed-price bundled service offering to take service from a
640 RES has been a feature of the Illinois competitive market that has contributed to
641 its success so far. Customers are accustomed to a DASR anytime rule and the
642 auction is perfectly able to accommodate that rule.

643

644 **Q. Please comment on the one-year stay requirement.**

645 A. Ameren has proposed that a customer who returns to take service under Ameren’s
646 BGS-FP product be required to take that service for one-year from the date the
647 customer returns to that service. This would be consistent with current and past
648 practice in which customers who returned to bundled service did so for a one-year
649 period. It should be noted, however, that the current one-year stay requirement on
650 return to bundled service that has been operative during the mandatory transition
651 period applies to existing frozen retail rates. Thus, the returning customer is
652 aware and chooses the price for the one-year period. Under Ameren’s proposal,
653 the customer that is required to stay for a year will have a known price only for
654 the remainder of the then-current price period and then will have a new, unknown
655 price set following another auction.

656 **Q. Please comment on the proposed 30-day sign-up or enrollment window.**

657 A. As discussed in more detail below, the Commission should reject the proposed
658 30-day enrollment window in favor of maintaining the existing 75-day enrollment
659 window that is used for the ComEd PPO and that has proved successful.

660

661 **VI. ENROLLMENT OR SIGN-UP WINDOW**

662 **Q. Please discuss the duration of the enrollment window proposed by Ameren.**

663 A. For commercial and industrial customers with demand of 1 MW or greater that
664 qualify for the one-year fixed-price product, Ameren has proposed a 30-day
665 window during which these customers must make an affirmative decision to take
666 this service. In the alternative, such a customer may choose to take service from a
667 RES; failure to act will result in such customers being placed on an hourly, real-
668 time product, BGS-LRTP.

669

670 **Q. How should Ameren's proposed enrollment window be modified?**

671 A. The Commission should reject this proposed 30-day sign-up window and opt
672 instead to retain the 75-day window that has applied to selection of the ComEd
673 PPO and that has worked well over the past several years. AmerenIP's PPO
674 offerings have been based on bi-monthly re-pricing and sign-up windows that can
675 range from as little as 2 days to as many as 45 days for a given customer,
676 depending on the customer's meter reading date juxtaposed to the re-pricing date.
677 This ungainly situation has been one more obstacle to choice in the Ameren

678 service area and Ameren should not be allowed to impose another sign-up
679 window variation similarly uncharitable to customer choice.

680

681 **Q. Why do you recommend that the Commission reject Ameren’s proposal to**
682 **impose a 30-day enrollment window?**

683 A. There are several reasons that the Commission should direct Ameren to adopt a
684 75-day sign-up window.

685

686 **Customers want it.** Customers have told us explicitly that they prefer a 75-day
687 window over a 30-day window. Implementing a 75-day window would afford
688 more time for customers to evaluate their alternatives. Business customers, for
689 the most part, do not have personnel or offices dedicated to buying electricity.
690 Therefore, buying electricity for retail customers is an activity that takes them
691 outside of their normal processes and is an occasional, rare activity. Many retail
692 customers purchase electricity employing lengthy committee processes; for many,
693 the decision to buy electricity is made by a board of directors during their monthly
694 meetings. This is especially true of governmental entities, park districts and
695 school districts, hospitals and many other types of retail customers. They simply
696 need more than 30 days to analyze their electricity choices, make proposals to
697 their directives, negotiate contracts and finally close their purchase transactions.
698 Experience demonstrates that many customers hire energy consultants and issue
699 requests for proposals to identify their best supply choice. These processes often
700 take longer than 30 days. A 75-day window would allow sufficient time for these

701 procurement processes to occur. The practices in Ameren that have led to wide
702 variations, 2 to 45 days, in PPO sign-up windows have been a problem. This is
703 discussed further in the Direct Panel Testimony of Coalition witnesses
704 Domagalski and Spilky. (*See* CES Ex. 3.0 at lines 515-33.)

705

706 **It allows for more time to correct mistakes.** It may prove especially important
707 following the first auction to allow time for corrections to be made given the
708 newness of the experience in Illinois. The risk of error in rate calculations and
709 allocations of wholesale costs and the potential negative effect will be particularly
710 acute the first time that a pricing process is implemented live. A 75-day window
711 would allow sufficient time for a utility to make the appropriate changes, should
712 an error be discovered during the sign-up window. Coalition witnesses
713 Bohorquez and Bollinger discuss this further in their direct testimony. (*See* CES
714 Ex. 2.0 at lines 68-115.)

715

716 **There is no empirical evidence in Illinois that maintaining the existing 75-day**
717 **sign-up window would be costly.** At this point, there is no empirical basis for
718 identifying a particular risk premium that might be associated with a 75-day
719 window. Unless and until credible evidence is presented in this regard, the
720 Commission can appropriately stay with a tried and true approach that accords
721 customers degrees of freedom for exercising choice that have proven workable.
722 The MVEC methodology currently in effect has never included an adjustment to
723 the MVEC based upon the length of time of the enrollment window. This is

724 rather obvious in the case of Ameren in which the enrollment windows have
725 ranged between 2 and 45 days. In short, there is no basis upon which the
726 Commission could conclude that the cost of keeping the price open for 75 days is
727 other than negligible. Further, based upon the benefits of holding the window
728 open for 75 days, it would be reasonable, consistent and appropriate to retain the
729 window, even if there is an actual incremental cost for this option.

730

731 **VII. AMEREN SHOULD BE REQUIRED**
732 **TO INCLUDE A PROVISION FOR MIGRATION**
733 **PREMIUM ALLOCATION IN ITS TRANSLATION TARIFF**
734

735 **Q. Please explain how Ameren has proposed to allocate the migration premium**
736 **in its translation tariff.**

737 A. Ameren has failed to include a migration premium in its proposed translation
738 tariff. Unlike ComEd, Ameren has made no provision in its Prism for what
739 should be a reasonable expectation of higher migration potential for customers
740 with higher demand levels than for customers with lower demand. Ameren's
741 translation tariff ignores the matter of allocating migration risk within the
742 customer classes in the grouping of customers under 1 MW of demand. The
743 failure to address allocation of migration risk premium will tend to shift the cost
744 burden of that premium to smaller customers. This matter is addressed in more
745 detail in the Direct Panel Testimony of Coalition witnesses John Domagalski and
746 Richard Spilky. (*See* CES Exhibit 3.0 at lines 84-216.)

747

748 **Q. How should the Ameren Prism be revised to allocate the migration risk**
749 **premium?**

750 A. The obstacles to choice in Ameren during the mandatory transition period have
751 rendered the switching data for Ameren less indicative of post-transition
752 migration potential than would be transition period switching data for ComEd.
753 Therefore, CES recommends that at the time the data inputs for the Ameren Prism
754 are set prior to distribution to registered auction bidders, Ameren should utilize
755 the same switching levels, as a percent of relevant Ameren class load, as would be
756 indicated by the ComEd data. That is, the Commission should direct Ameren to
757 adopt the approach to migration risk treatment in the Prism that CES has
758 recommended for use by ComEd in its Prism.

759

760 **Q. How does the CES approach to migration risk differ from the approach that**
761 **ComEd took in its proceeding?**

762 A. ComEd erred in underweighting the migration potential for PPO load, assuming
763 that only half of the customers who presently are being served under the PPO
764 would switch to RESs if the economics dictated doing so. Such an assumption is
765 not supported by the switching statistics or our experience in the competitive
766 market. In the ComEd proceeding, CES recommended that ComEd Prism's
767 assignment of a 50% migration potential to PPO load be raised to 100%. Making
768 that adjustment for Ameren is even more important, since the PPO has played a
769 relatively greater role in customer choice in the ComEd service territory than in
770 the ComEd service territory. In short, it should be assumed in the Prism

771 calculations that all PPO customers would switch to RES supply if the economics
772 so dictate.

773

774 **Q. Why do you believe that customers who presently are being served under the**
775 **PPO would switch to RES if the economics dictated doing so?**

776 A. There are numerous indications that PPO customers would switch to RESs
777 supply. **First**, PPO customers have demonstrated that they are evaluating
778 competitive options and have shown the ability to choose their supply source
779 under delivery service conditions. It should not be presumed that use of the PPO
780 by these customers involves an abiding commitment by customers to stay with the
781 utility. In Ameren, because of rules and conditions inhospitable to customer
782 choice, the PPO has been the key option for customers seeking savings.

783

784 **Second**, in there has been substantial turnover in PPO load and a good deal of
785 migration between delivery services supply from RESs and the PPO in the
786 ComEd service area. CES Exhibit 1.4 attached to this testimony shows that the
787 percentage rates of change in load migrating in and out of ComEd PPO service
788 are higher by some considerable measure than for RESs service. Statistics as of
789 each December after 1999 show that for business customer classes under 1 MW
790 in demand, percentage changes in PPO load have generally been as substantial as
791 those for RES load. In CES Exhibit 1.4 demonstrates that in the ComEd proposed
792 Large Customer class (400 kW - 1 MW), the average yearly percentage change in
793 the period 2000-04 was 22% for ComEd PPO load, and 24% for RES load.

794 Further, there is a strong indication, given the sometimes inverse directions in the
795 percentage changes of PPO and RES load in given years, that there is substantial
796 migration between the two supply sources.

797

798 For the Ameren service territory, of course, the imbalance between PPO and RES
799 service levels complicate the data. CES Exhibit 1.5 attached to this testimony
800 shows that migration into the Ameren-CIPS PPO as well as into RES service was
801 at rates year over year in the hundreds and even thousands of percentage points.
802 The migration figures for Ameren-IP and for Ameren-CIPS are such that there
803 can be no doubt that customers in each area have shown a desire to shop for better
804 prices and that if there were options other than the PPO and utility bundled
805 service those options would be considered and chosen when advantageous.

806

807 All of the above represent strong indications of in and out migration that, if fully
808 considered, should lead to concluding that PPO migration potential should be
809 pegged at 100%, the same as for RESs load, for purposes of the allocation of
810 migration risk premium in the Ameren Prism which at this point completely
811 ignores such allocation.

812

813 **Q. Should the Commission take any different approach to revising Ameren's**
814 **Prism to allocate migration risk premium if the Commission accepts the**
815 **Coalition's proposal to have a separate auction product for the customers in**
816 **the 400 kW to 1 MW customer grouping?**

817 A. No. The issue of allocation of the migration risk premium should be addressed
818 even if the Commission accepts the proposal to revise the structure of the
819 offerings to customers below 1 MW. If load for customers between 400 and
820 1 MW were extracted from the BGS-FP portion of the auction, there would still
821 be the task of allocating migration risk premium contained in the auction price
822 over the remaining customer classes. While the overall premium requiring
823 allocation would be lower, given the expected lower migration risk of those
824 remaining customers in the BGS-FP group, customers in gradations from
825 residential up to 400 kW still would have to be distinguished by their migration
826 proclivity.

827

828 **XIII. SUPPLY PROCUREMENT ADJUSTMENT CHARGE**

829 **Q. What changes should be made in Ameren’s Supply Procurement Adjustment**
830 **Charge (“SPA”)?**

831 A. Ameren has developed a volumetric Supply Procurement Adjustment Charge, that
832 is more appropriate than ComEd’s proposed Supply Adjustment Charge (“SAC”),
833 which ComEd seeks to impose charges fixed by customer class. However,
834 Ameren has weighted the volumetric charge in a fashion that tends to place a
835 greater burden on residential and small business customers than is warranted.
836 Ameren does little to justify this apportioning. The Coalition’s proposal for an
837 evenly applied volumetric SPA is discussed in more detail in the Direct Panel
838 Testimony of Coalition witnesses Domagalski and Spilky. (See CES Ex. 3.0 at
839 262-406.)

840 **IX. DEFAULT SUPPLY SERVICE AVAILABILITY CHARGE**

841 **Q. Please explain Ameren’s proposed Rider D – Default Supply Service**
842 **Availability Charge.**

843 A. Ameren’s proposed Rider D – Default Supply Service Availability Charge –
844 would assess certain RES customers a charge, apparently related to Ameren
845 offering hourly service. Ameren proposes to assess a per-kWh volumetric fee on
846 all non-utility supply customers over 1 MW, supposedly as a charge to
847 compensate for the option such customers have to switch to the hourly, real-time
848 service, BGS-LRTP. In Ameren’s response to IIEC Data Request 1-19, attached
849 to this testimony as CES Ex. 1.6, Ameren witness Wilbon L. Cooper, says that
850 Ameren has “hard coded” a fee of 15 cents per megawatt-hour (15 ¢/MWh). In
851 this context, “hard coded” seems to mean that Ameren would try to fix the
852 capacity price prior to the bidding in the auction. This pre-ordained price would
853 be a noticeable add-on for customers who are not taking any utility supply service
854 whatsoever, who may never take the hourly service, and who have not indicated
855 an intention to take the service.

856

857 **Q. How does Ameren justify its desire to impose this charge?**

858 A. Ameren makes no effort in its direct testimony to provide any justification for this
859 “non-bypassable” charge as it is described in the proposed Ameren Rider D tariff.
860 In the Ameren response to data requests Ameren has asserted that, “In essence,
861 Rider D represents a capacity option premium, giving customers the right to take
862 BGS-LRTP as default service” and that, “[t]his approach has been used

863 successfully in the New Jersey auction process. Once the MISO establishes a real
864 time capacity market, the Ameren Companies [sic] approach will have to be re-
865 evaluated.” (See Ameren response to EPS Data Request 2.01, attached to my
866 testimony as CES Ex. 1.7.)

867

868 Further, Ameren has admitted that it has no study or analyses to support its “hard
869 coded” anticipated charge of 15 ¢/MWh. (See IIEC Data Request 3-6, attached to
870 my testimony as CES Ex. 1.8.) Thus, Ameren has no basis for anticipating that it
871 will incur any incremental cost at all; much less specific costs that would be tied
872 to this charge. Further, while the alleged anticipated costs are presented as being
873 supply-related, Ameren has proposed that the charge be imposed on delivery
874 service customers only.

875

876 **Q. What would the implications be for customers and the development of**
877 **competition if the Commission were to approve Ameren’s proposed Rider D?**

878 A. Ameren’s proposed Rider D is unduly discriminatory, unreasonable, unjust.
879 Ameren seeks to impose upon RES customers a charge for a “service” that is not
880 being utilized, and may never be utilized by those customers; a charge on RES
881 customers for a supply-related “service” that Ameren will provide; a charge that is
882 not justified by a cost-of-service study (or any analysis whatsoever); a charge that
883 ComEd has not seen fit propose, although ComEd has provided and will continue
884 to provide the same “service.” Thus, if the Commission were to allow this charge
885 to be imposed, Ameren would succeed in doing something that the Commission

886 has done its best to avoid – including supply costs in delivery service rates in
887 much the same way that CTCs have been attached directly to delivery service
888 charges during the transition. On both a practical and a theoretical level, if the
889 Commission were to approve this charge, it would be a significant blow to the
890 development of competition in the Ameren service areas.

891

892 **X. MAJOR DEVELOPMENTS IN THE ILLINOIS REGULATORY CLIMATE**

893 **Q. Please describe the major developments in the regulatory climate in Illinois**
894 **since the passage of the 1997 Choice Law and the instant filings.**

895 A. The most important feature of the regulatory environment is that, as a general
896 matter, the Commission has adopted a positive and reasonably proactive posture
897 in administering the Choice Law. The Choice Law provided considerable
898 flexibility to the Commission to adapt its regulations to market conditions. The
899 Commission has exercised its authority to foster competitive market development
900 and generally has chosen a progressive path in decisions regarding competitive
901 market implementation.

902

903 The Commission's decisions helped in the cultivation of an atmosphere in which
904 market participants, utilities, competitive suppliers such as utilities operating
905 outside their service areas and licensed RESs have increasingly been able to focus
906 attention and effort on improving commercial conditions and doing business
907 rather than expending resources on contentious regulatory proceedings with
908 uncertain outcomes. Moreover, the Commission showed leadership and concern

909 for business customers by ratifying the dockets that implemented the Global
910 Settlement that Ameren, ComEd, consumer groups, businesses, and RESs
911 negotiated in early 2003. By doing so, the Commission created the conditions
912 necessary for businesses to enter into multi-year retail contracts; as a result of the
913 Commission's actions with respect to the Global Settlement, businesses could, for
914 the first time, hedge their supply and CTCs for the duration of the transition
915 period, thereby ensuring budgetary certainty.

916

917 This leadership from the Commission has proven to be a steadying force in the
918 evolution of the competitive market in Illinois.

919

920 **Q. Has the market been able to develop well under the Choice Law?**

921 A. The Choice Law has proven to be more flexible and durable than we might have
922 had reason to expect when it passed. Credit is due to the General Assembly for
923 having taken the time to produce a measure that many parties were able to
924 contribute to and to support. The Commission has been assertive in exercising the
925 substantial discretion the law provides to the regulator. While we are still more
926 than a year and a half away from the end of the mandatory transition period on
927 January 1, 2007, it is fair to say that the commercial and industrial market in
928 Northern Illinois served by ComEd has developed well under these conditions,
929 while in the Ameren wires service area in Central and Southern Illinois, progress
930 has been less satisfying. The role of CTCs in limiting full access to the benefits
931 of the market is still a concern, for instance, and there are some utility practices

932 that appear to inhibit customer choice and to increase unnecessary transaction
933 costs.

934

935 **Q. What empirical measures would suggest the level of success so far in the**
936 **development of the market?**

937 A. There are four (4) empirical measures that suggest substantial market
938 development. The first measure is the total portion of load that has moved from
939 bundled service to delivery service. The second is the range of business
940 customers demonstrating an appetite for competitive sourcing and contracting for
941 alternative supply. Third is the dollar savings that customers have realized
942 through competitive supply sourcing compared to price levels in place under
943 frozen rates. Fourth is the participation in the market by RESs competing against
944 one another.

945

946 **Q. Please discuss the first measure, the portion of load that has migrated to**
947 **delivery services.**

948 A. The amount and portion of load switched to delivery services can be analyzed
949 according to various categories, such as PPO load or load served by RESs. The
950 Commission posts switching statistics on its website and recapitulates the data in
951 its annual reports on the status of competition to the General Assembly. CES
952 Exhibit 1.9 attached to this testimony shows the amounts of load and the portions
953 of load that have switched from traditional bundled service under frozen rates to
954 alternative, market priced supply. In the ComEd service area at year-end 2004

955 over 21,000 business customers had switched, accounting for almost 52% of all
956 usage by business customers above 15,000 kWh per year. In the Ameren service
957 territories over 1,600 business customers have gone to delivery service,
958 accounting for almost 33% of all non-small business load.

959

960 CES Exhibit 1.10 attached to this testimony shows that slightly less than one-third
961 of all switched load is served through the PPO statewide. Put another way, about
962 9% of total usage by all customers in the combined ComEd and Ameren service
963 areas is served by the PPO while 21% of total load is served by RESs. From
964 another perspective, ComEd Exhibit 7.6 (CES Ex. 1.3) allows for a calculation
965 that 25% of all business load below 1 MW of demand was served under the PPO
966 at the end of 2004 (3,965 GWh / 31,490 GWh) while RESs served 35% (11,117
967 GWh / 31,490 GWh). The substantial role of the PPO should not cloud the
968 recognition that customers have demonstrated an appetite for making
969 arrangements other than for service under the traditional bundled tariffed rate.
970 Choosing to take PPO service is indeed a choice to move from traditional bundled
971 service to a contract-based, market priced product. In Ameren, the relationship is
972 reversed, with PPO service accounting for about 8% of all business load under 1
973 MW (761 GWh / 9,579 GWh) and RES service accounting for one-and-a-half
974 percent (144 GWh / 9,579 GWh).

975 **Q. Please discuss the second measure, the range of business customers**
976 **demonstrating an appetite for competitive supply.**

977 A. As can also be seen in CES Exhibit 1.9, customers over 1 MW have been
978 especially prepared to consider their energy purchase as a separate matter from
979 delivery. However, this willingness extends to business customers under 1 MW
980 of demand as well.

981

982 The switching statistics reported by the Commission in its most recent Annual
983 Report to the General Assembly on the Status of Competition in 2004 show that,
984 at the end of last year, on an aggregate basis, over half the usage by customers in
985 the Ameren and Ameren service area with demands in excess of 1 MW was
986 served through delivery services. As can be seen in CES Exhibit 1.9, in the
987 ComEd service area, the level was over three-fifths, 63.3%, of all such load while
988 in Ameren it was somewhat less than half at 46.6%. The combined figure for
989 ComEd and Ameren is 56.6%.

990

991 The data from the Commission report reflected in CES Exhibit 1.9 shows that the
992 nearly 6% of customers with less than 1 MW of demand in the ComEd service
993 area served through delivery services accounted for about 40% of the load of that
994 grouping of customers. In the combined Ameren service areas about 1% of non-
995 small business customers under 1 MW of demand switched, accounting for 10%
996 of load within that group. As is readily apparent, the percentage of usage by
997 customers with under 1 MW of demand that has switched to alternative supplies

998 through delivery services is significantly greater than the percentage of the
999 number of such business customers switching. Customers with demands below 1
1000 MW that have switched tend to have greater than average usage within that group
1001 of customers. This should be considered an expected result given our experiences
1002 with other network industries' restructuring. Customer choice does not displace
1003 monopoly all at once. On average, larger customers tend to move toward choice
1004 sooner in competitive transitions than do smaller customers. We can expect,
1005 however, that with the demise of CTCs, especially class-based CTCs for
1006 customers below 400 kW, smaller customers will exhibit a growing appetite for
1007 choice.

1008

1009 **Q. Please discuss the third measure, savings realized relative to the tariffed rates**
1010 **for bundled service frozen under the Choice Law.**

1011 A. The realized savings compared to frozen bundled rates, is necessarily an estimate.
1012 The data available on the Commission's website and on the legislated mitigation
1013 factors provide a sound foundation for the estimate. Overall, a reasonable
1014 estimate based on the savings calculations outlined below and then the application
1015 of judgment would produce a realized savings of about \$1 billion for business
1016 customers in ComEd and Ameren service territories from the commencement of
1017 open access in October 1999 to the end of 2004 and in the succeeding several
1018 months. That averages to about \$15 million per month of open access.

1019 **Q. Please describe the savings calculation method you employed.**

1020 A. The basic method of establishing realized savings was to multiply the number of
1021 kilowatt hours in each utility service territory provided through delivery service
1022 by the mitigation factors in effect in the period of time the kilowatt hours were
1023 served. CES Exhibit 1.11 shows the breakdown of savings related to kilowatt
1024 hours by time period for ComEd and for the combined Ameren utility service
1025 areas. For the period of October 1999 through December 2004, the calculation
1026 produces minimum savings realized of over \$762 million.

1027

1028 **Q. If the initial calculation yields a savings estimate statewide of \$762 million for**
1029 **business customers, how do you go about estimating additional savings that**
1030 **raise that figure to nearly \$1 billion?**

1031 A. There are four reasons that total actual savings would approach \$1 billion as of
1032 year-end 2004. The first reason is the structure of CTC assessments. CTCs are
1033 purely volumetric in assessment and therefore have had some distorting effects.
1034 Customers with class, rather than individual, CTCs and with high peak demand
1035 can realize relatively greater savings because moving to delivery services can
1036 allow them to avoid high demand charges for energy embedded in the frozen
1037 tariffs.

1038

1039 The second reason is that especially in the earlier stages of any competitive
1040 transition, a higher percentage of savings and absolute dollar savings tend to be
1041 required to motivate customers to make the leap into a choice environment than

1042 would be necessary at later stage of competitive market development. Thus, in
1043 Illinois' transition customers with larger than average savings tended to be first
1044 movers toward competitive markets.

1045

1046 The third reason is that the intensity of competition among RESs for customers
1047 has led to aggressive pricing that have conveyed additional savings to customers.
1048 My experience with NewEnergy suggests to me that it has not been at all unusual
1049 for certain customers to realize greater savings than the minimum that would
1050 otherwise have been suggested by the mitigation factor in place at the time due to
1051 competitive pressures and other customer-specific characteristics. As a general
1052 matter, for every customer interested in exercising choice and for whom the
1053 economics worked under the prevailing rules of the game, there have been several
1054 RESs similarly interested in serving each such customer.

1055

1056 Fourth, because a greater freedom for contract design in the competitive energy
1057 market than that permitted under tariffed services, many customers with large
1058 electrical loads have been able to tailor their alternative supply contracts to better
1059 match the required flexibility of their operating needs, leading to both direct
1060 energy cost savings per unit of production and to other operational savings as
1061 well.

1062 **Q. Please discuss the fourth measure, participation in the market by RESs.**

1063 A. As of May 31, 2005, the Commission website identified a total of sixteen (16)
1064 RESs eligible to serve non-residential customers above 15,000 kWh per year,
1065 only three of which are certificated solely for the ComEd service territory. The
1066 Commission recently granted ARES certificates to two (2) additional retail
1067 electric suppliers who are active throughout the United States. (*See* ICC Docket
1068 Nos. 05-0257, 05-0305.) Although a number of RESs would appear to have little
1069 or no sales activity, those RESs that have been actively engaged in the Illinois
1070 market have built considerable books of business and, on a continuing basis, seek
1071 out additional customers. One good indicator of the activity in the market can be
1072 seen in the reports made public each summer by the Mid-America Interconnected
1073 Network (“MAIN”). The “Load and Resource Audit” Summer Assessment report
1074 to the MAIN Board of Directors provides, among other things, data on the
1075 estimated demand served by load serving entities, including RESs within the
1076 service areas of each of the Illinois member utilities of MAIN. It is possible to
1077 track the general level of market participation by the various RESs through these
1078 reports.

1079
1080 CES Exhibit 1.12 attached to this testimony contains information extracted and
1081 summarized from the MAIN Summer Assessment Reports for 2001, 2002, 2003
1082 and 2004 showing a significant distribution of load responsibilities for the various
1083 RESs over time. Competitive activity among RESs for customer load is evident.
1084 The market cannot be seen as static or unaffected by competitive activity given

1085 these figures. In the ComEd area, from the summer of 2001 through summer
1086 2004, estimated demand increased for all but one of the eight individual RESs
1087 shown as load serving entities (“LSE”) scheduling deliveries into ComEd.
1088 Further, there has been some shifting in rankings of RESs by the amount of
1089 estimated demand.

1090

1091 **XI. THE MEMORANDUM OF UNDERSTANDING**

1092 **Q. Please discuss the relevance of the Memorandum of Understanding between**
1093 **ComEd and theCES.**

1094 A. Importantly, ComEd has entered into an MOU with respect to a number of
1095 important post-transition service conditions that have a relationship to the role
1096 that auctions would play. (A copy of the MOU (ComEd Ex. 1.6 in ICC Docket
1097 No. 05-0159) is attached to this testimony as CES Ex. 1.13.) The signatories to
1098 the MOU are ComEd, the Coalition of Energy Suppliers (Direct Energy,
1099 MidAmerican, NewEnergy, Peoples, U.S. Energy Savings, and Strategic Energy,
1100 LLC) and the Illinois Retail Merchants Association (“IRMA”).

1101

1102 **Q. Please explain the significance of the MOU as it relates to the details of**
1103 **Ameren’s proposed procurement methodology and translation tariffs.**

1104 A. While Ameren has not at this point entered into a similar MOU, the important
1105 principles addressed by the MOU are at least as important in the context of
1106 assuring customer choice opportunities in Ameren. Competitive development in
1107 Ameren needs to be brought up to date with the majority of the electric market in

1108 Illinois and the MOU's principles, if adopted by the Commission, would
1109 contribute to that end.

1110

1111 It is fair to say that important regulatory decisions tend to be made in a time frame
1112 that is not necessarily coordinated with the timing parameter in which business
1113 customers are required to make energy planning decisions. This regulatory
1114 incongruence with business timing can have important impacts on a business's
1115 investment, hiring and operating needs. The parties to the MOU concluded that it
1116 would be in the interest of customers and other participants to bring as much
1117 weight of agreement and certainty to bear as possible on questions important to
1118 business energy decisions. While no set of parties to a proceeding before the
1119 Commission can dictate an outcome to the Commission, the Commission appears
1120 to give some deference to the considered judgment of parties agreeing on
1121 important issues. The MOU was intended to solicit that deference from the
1122 Commission and thereby communicate to customers levels of certainty on a
1123 modest number of important questions such that they can make energy decisions
1124 for the post-transition period without necessarily awaiting final Commission
1125 orders in the procurement or delivery service cases.

1126 **Q. Why is it important or valuable for business customers to be able to contract**
1127 **on a forward basis for post-2006 supplies prior to the conduct of an auction**
1128 **or even prior to final Commission orders?**

1129 A. If business customers have adequate certainty about the post-transition “rules of
1130 the game” to enter into forward contracting for supplies, there will be substantial
1131 value not only for the contracting customers but for other customers and
1132 participants in the market as well. Between now and the time of an auction,
1133 market prices for electric supply are going to fluctuate. The real flowering of the
1134 competitive market will come with the ability of customers to take advantage,
1135 individually, of the timing of supply purchases rather than being limited to a
1136 utility or regulatory schedule as largely has been the experience thus far in the
1137 transition. Many business customers are interested in contracting for a known
1138 price for their energy supplies in order to take advantage of dips in wholesale
1139 market prices and to better estimate their energy budgets and thereby better plan
1140 investment, hiring, production and operations. Assuring that businesses in Illinois
1141 would have the ability to arrange their energy supplies through forward contracts
1142 would represent an advantage for the state and an important condition for in-state
1143 job creation.

1144

1145 Moreover, forward contracting for post-2006 supplies by business customers
1146 through their RESs would be an excellent means by which regulators and market
1147 participants can take the “pulse” of the market on an ongoing basis. The ability of
1148 business customers to pick and choose their time for contracting based on market

1149 conditions rather than being largely bound to prescriptive contracting periods will
 1150 both contribute to and be a good measure of liquidity of supplies and the ability of
 1151 RESs to meet these customers' needs.

1152

1153 **Q. How do you propose that the Commission apply the principles in MOU to**
 1154 **Ameren?**

1155 A. It would be most appropriate for Ameren to execute its own version of the MOU
 1156 with the Coalition and others, and for that to be introduced into evidence in this
 1157 proceeding. However, if that does not occur, it would be perfectly appropriate for
 1158 the Commission and/or Commission Staff to direct Ameren to prepare its delivery
 1159 service tariff filing in a manner that would easily permit the Commission to apply
 1160 those principles.

1161

1162 **XII. SUMMARY OF RECOMMENDATIONS**

1163 **Q. Please summarize the Coalition's recommendations in the instant**
 1164 **proceeding.**

1165 A. There are six (6) primary recommendations outlined in my direct testimony.
 1166 Specifically:

1167 • **The Commission should direct Ameren and ComEd to conduct their**
 1168 **initial auctions in May 2006, as proposed by Ameren.**

1169 • **The Commission should direct Ameren to establish the BGS-LFP2**
 1170 **auction product advocated by the Coalition.** Business customers with
 1171 peak demands between 400 kW and 1 MW should be offered a one-year,

1172 fixed price product based on single year bids made in the auction. The
1173 product should be almost identical to the one-year, fixed price product
1174 offered to customers over 1 MW of demand. The differences would be
1175 that, whereas customers over 1 MW of demand would be subject to an
1176 enrollment window, customers under 1 MW of demand would (1) be
1177 subject to the same migration rules as residential and business customers
1178 under 400 kW of demand; and (2) default to the fixed-price retail product
1179 if they do not affirmatively opt for RESs direct service.

1180 • **The Commission should direct Ameren to expand its enrollment**
1181 **window for the over 1 MW customer class.** Customers with demand
1182 over 1 MW should have a 75-day enrollment window for the proposed
1183 single-year, fixed-price product. Ameren’s proposed considerably shorter
1184 30-day window should be rejected in favor of a proven 75-day window.

1185 • **The Commission should direct Ameren to revise its translation tariff**
1186 **to address migration risk.** Ameren’s proposed translation tariff
1187 improperly fails to recognize differing migration potential across customer
1188 classes. As a result, Ameren’s proposal would shift the cost burden of that
1189 premium to smaller customers.

1190 • **The Commission should direct Ameren to revise its Supply**
1191 **Procurement Adjustment Charge (“SPA”) to properly reflect all**
1192 **direct and indirect costs related to Ameren administering the new**
1193 **supply-related products.** Further, uncollectible expenses should be
1194 separately accounted for between “delivery services”-related uncollectible

1195 expenses and “energy”-related uncollectible expenses, and charged to
1196 customers accordingly.

1197 • **The Commission should reject Ameren’s proposed “Rider D – Default**
1198 **Supply Service Availability – Large” as unjust, unreasonable, and**
1199 **unduly discriminatory.** This proposed surcharge, improperly would
1200 impose a supply-related charge upon all customers over 1 MW who are
1201 not using Ameren’s auction-acquired supply; in effect, creating a supply-
1202 related non-bypassable delivery service charge.

1203

1204 **Q. Does this conclude your direct testimony?**

1205 A. Yes.