STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	
Proposed tariffs filed pursuant to Article IX of the Public Utilities Act defining a competitive supply procurement process and, pursuant to Section 16-112(a) of the Act, establishing a market value methodology to be effective post-2006; providing for Power Purchase Options and for recovery of transmission charges post-2006; and enabling subsequent restructuring of rates and unbundling of prices for bundled service pursuant to Sections 16-109A and 16-111(a) of the Act.	:	No. 05-0159

Surrebuttal Testimony of

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Vice President,

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Commonwealth Edison Company

and

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ComEd Ex. 17.0

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Q. Please state your name, your business address, and your current position.

A. My name is Arlene A. Juracek. My business address is 440 S. LaSalle Street, Suite 3300, Chicago, IL 60605.

Q. Have you previously filed testimony in this Docket?

A. Yes. I filed rebuttal testimony in this docket on behalf of Commonwealth Edison Company ("ComEd").

Purpose and Summary

Q. What are the purposes of your surrebuttal testimony?

A. My surrebuttal testimony has six distinct purposes. **First**, I will summarize the bases on which a few of intervening parties -- CUB, CCSAO, the AG (the "Opponents") -- continue to oppose the Illinois Auction Proposal[†] and provide a brief overview of ComEd's surrebuttal case, including briefly identifying ComEd's other witnesses and the subject matter of their testimony.

Second, I will respond to several of the policy arguments that the Opponents make, and explain why their arguments are unsupported, unjust, and unreasonable, and why their request that the Commission reject Rider CPP - Competitive Procurement Process ("Rider CPP") would be harmful to ComEd and its customers. Other of their arguments will be addressed by other ComEd witnesses.

[†] As in earlier testimony, the "Illinois Auction Proposal" refers to the competitive procurement process reflected in ComEd's tariff filings, as well as the rate design features of those tariffs, and the other processes and procedures described in ComEd's testimony that ComEd has asked the Illinois Commerce Commission (the "ICC" or "Commission") to review and consider, and/or adopt as conditions in its final order, in approving ComEd's filed tariffs. "AG" refers to the Office of the Illinois Attorney General. CUB refers to the Citizens Utility Board and "CCSAO" refers to the Cook County State's Attorney's Office.

Third, I will turn to the auction process embodied in Rider CPP and summarize the areas where ComEd, in many cases in accord with similar actions by the Ameren operating companies in Docket 05-0160 (cons.), has modified the Illinois Auction Proposal in response to constructive comments and suggestions from the Staff of the Illinois Commerce Commission ("Staff") and other parties in their direct and, now, rebuttal testimonies.

Fourth, I will identify a handful of important areas where disagreement over the processes remain. With respect to several of those areas, my testimony will explain why ComEd's proposals should be adopted. Other process issues will be addressed by other ComEd witnesses.

Fifth, I will respond to the rebuttal testimony of BOMA witness Dr. Arthur Laffer concerning the meaning of "futures contracts," and confirm that the Supplier Forward Contracts (SFCs) resulting from the Illinois Auction Proposal are "exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy …." (220 ILCS 5/16-112(a)).

Sixth, and finally, I will address remaining issues concerning the specific terms of the SFCs.

Q. What exhibits are attached to your surrebuttal testimony?

A. There are three exhibits to my surrebuttal testimony.

- <u>ComEd (Group) Exhibit 17.1</u> is narrative direct, rebuttal, and supplemental rebuttal testimony submitted to the Commission by Mr. Robert McDonald, in Docket Nos. 00-0230 and 00-0244 (Consol.), as well as the Commission Orders in that Docket and the successor docket (00-0394 and 00-0369 (Consol.)) in which that testimony was considered.

- ComEd Exhibit 17.2 contains examples of recently published reports evaluating and confirming the benefits of restructuring in jurisdictions where efficient markets are reported to be functioning.

- ComEd Exhibits 17.3 is a revised and updated version of ComEd's proposed SFC for the CPP-B group. This form SFC reflects changes and revisions that ComEd previously made, as well as additional changes ComEd now accepts in light of the parties' rebuttal testimony. ComEd Exhibit 17.3 supersedes the form CPP-B SFC previously submitted as ComEd Exhibit 9.5. Moreover, ComEd proposes to make analogous changes to the other two form SFCs, attached to my rebuttal testimony as ComEd Exhibits 9.6 and 9.7, in compliance with the Commission's final order in this Docket.

Summary of Testimony of ComEd's Surrebuttal Witnesses

Q. Can you succinctly describe the policy grounds on which the Opponents, in their rebuttal testimony, ask the Commission to reject the Illinois Auction Proposal?

A. Yes. The Opponents object to the concept of basing ComEd's retail supply rates on what it actually will cost ComEd to purchase the required power and energy in the federally-regulated wholesale energy market.

- The Opponents allege that purchasing its power and energy requirements from the lowest cost vendor through a transparent, open, and non-discriminatory process will result in ComEd paying unjust and unreasonable and/or imprudent costs, although the evidence shows that those costs will be the lowest available in the market and will be incurred only at rates that I understand will have been conclusively determined to be just and reasonable under the authority of the Federal Energy Regulatory Commission.

- The Opponents allege that the wholesale electricity markets are not competitive, although the evidence shows otherwise, and although they fail to explain credibly how in any event ComEd could possibly expect to purchase its requirements at less than the lowest price available in the market.

- The Opponents allege -- without providing detail, rigorous study, experience, or analysis of any defined alternative proposal -- that other unspecified "active portfolio management" options could somehow produce lower costs than competition.
- The Opponents allege that the Illinois Auction Proposal is an attempt to avoid Commission review of the justness and reasonableness of ComEd's tariffs and the of prudence of its management's actions, although that is just the opposite of the truth. ComEd is expressly asking the Commission to determine the justness and reasonableness of the proposed tariffs in this Docket, based on the evidence. ComEd is asking the Commission, based on the information now available, to find that the proposed competitive procurement process (which also includes Commission review of each auction's results) is a prudent procurement mechanism and a reasonable exercise of management judgment. Given these fact, the Opponents' real goal appears to be to impose unjust and unfair review of the outcomes of procurement decisions after the fact.

Q. Do any other parties oppose the Auction?

A. No. Several other parties, such as the Illinois Industrial Energy Consumers ("IIEC") and the Building Owners' and Managers' Association ("BOMA"), neither affirmatively support nor oppose the Proposal. But the IIEC asks that the Proposal be modified, not rejected, and BOMA witnesses likewise propose that modifications be made to a competitive procurement auction process. The remaining parties filing testimony, as well as Staff, concur that a competitive auction should be approved.

Q. You testified earlier that you would provide a summary of ComEd's surrebuttal case. What issues are each of ComEd's surrebuttal witnesses principally addressing?

A. In addition to my surrebuttal testimony (ComEd Ex. 17.0), which will address the topics I mentioned above, ComEd is submitting the surrebuttal testimony of the following witnesses:

- **William McNeil** (ComEd Ex. 18.0), Director of Regulatory Strategy for ComEd, will respond to requests for revisions to the auction process and refute arguments that alternative mechanisms would be superior.

- **Dr. Chantale LaCasse** (ComEd Ex. 19.0), Vice President, NERA, will address rebuttal testimony of Staff and intervenors concerning the design, structure, operation, and management of the descending clock auction itself, and the procedures for ensuring it is transparent, fair, and efficient. Dr. LaCasse will refute the testimony of the Opponents that question the effectiveness of the auction as well as certain requests to modify it which would be inefficient, impractical, or undesirable.

- **Andrew Parece** (ComEd Ex. 20.0), Managing Principal, Analysis Group, Inc., will continue to provide an independent perspective on auction design and management, and will respond to certain requests for changes in the auction.

- The panel testimony (ComEd Ex. 21.0) of **Paul R. Crumrine**, ComEd's Director of Regulatory Strategies and Services, and **Lawrence S. Alongi**, ComEd's Manager of Distribution Rate Design and Administration, responds to rebuttal testimony of Staff and intervenors concerning Rider CPP and other tariffs implementing the auction Proposal and translating the results into rate components.

- The testimony of **Kevin J. Waden, CPA** (ComEd Ex. 22.0) responds to rebuttal testimony of Staff relating to proposed accounting for charges imposed and revenues collected under Rider CPP.

- **Steven T. Naumann, P.E.** (ComEd Ex. 23.0), Vice President of Wholesale Market Development, Exelon, refutes claims made in the rebuttal testimony of CUB/CCSAO and AG witnesses Fagan, Rose, and Steinhurst concerning the transmission system and allegations that transmission constraints will restrict the market and promote the exercise of market power. Mr. Naumann also addresses additional issues concerning the use of the transmission system and PJM markets by bidders in the proposed auctions.

- **Dr. William H. Hieronymus** (ComEd Ex. 24.0), Vice President, CRA International, demonstrates that the markets in which the auction will be conducted will be competitive and refutes claims that the auction will clear at uncompetitive prices due to the exercise of market power.

- **Professor William Hogan** (ComEd Ex. 25.0) of Harvard University and LECG, responds to rebuttal testimony regarding the degree of competition in the PJM and Midwest ISO regional markets and the merits, as a matter of economics and policy, of using a descending clock, vertical tranche auction to procure contracts to meet the energy needs of ComEd's default supply customers.

Finally, I note that, especially given the limited time in which ComEd had to review rebuttal testimony and its volume, ComEd cannot respond in surrebuttal to every factual error or argument with which it disagrees. We have focused on the major arguments and most material facts.

Q. Ms. Juracek, in light of rebuttal testimony of Staff and intervenors and ComEd's response thereto, what action should the Commission take with respect to the Illinois Auction Proposal?

A. The Commission should approve the tariffs filed by ComEd embodying the Illinois Auction Proposal, as it has been modified and improved in response to constructive comments of Staff and various intervenors in their direct and rebuttal testimonies. The Commission should require that ComEd make a compliance filing within 10 business days of the final order incorporating tariff revisions, including those discussed in ComEd's rebuttal and surrebuttal testimonies, and to proceed with the preparations for the auction, working with Ameren and its Staff, also as described in the testimony. The Commission should also include in its order other provisions that ComEd has requested, including approval of the process by which parties can comment on the initial auction and participate in the consideration of future revisions and improvements.

Responses to Policy Positions and Recommendations of the Opponents

Q. Have the Opponents identified any viable alternatives to ComEd procuring from the wholesale market the electric power and energy it requires to serve its retail customers' needs?

A. No, they have not. They have identified no plan which the Commission could adopt in this Docket that would provide Illinois consumers with the electricity that they need. Their requests to the Commission range from rejection of the auction and open ended study, to naïve notions of acquiring electricity from affiliates, that lack the required resources, at prices that are not reasonable or available.

The simple fact remains that ComEd must procure the electric power and energy its retail customers need from the wholesale markets. ComEd owns no generation and after the expiration of the mandatory transition period must look to the wholesale market. Restructuring, and the generation divestiture that was an integral part of restructuring for ComEd and the other major Illinois utilities of the time, are historical facts. The parties objecting to the Illinois Auction Proposal fail to present the Commission with any realistic alternative to acquisition from the market, and at market prices.

Q. What about the suggestions by Opponents, particularly in the rebuttal testimony of Dr. Steinhurst (CUB/CCSAO Ex. 4.0), that ComEd could obtain electricity at lower rates by "actively" managing its portfolio?

A. By using a well designed auction, ComEd <u>is</u> actively managing its portfolio, and doing so efficiently and in a way expected to minimize its costs. By contrast, the rebuttal testimony of the Opponents offers no sensible reason to believe that by being required to directly perform all of the tasks necessary to assemble a supply portfolio and then

assuming the risk of portfolio allocation, ComEd and its customers will somehow be better off. The approach would impose significant supply portfolio risk directly on ComEd, which cannot manage such risks as effectively and efficiently as the market, and thereby impose added risks and costs on ComEd's retail customers. Moreover, there are significant disadvantages inherent in implementation of this approach, in addition to the added costs of supply administration. These conditions will result in higher, not lower, prices for ComEd and its customers. And, in the end, ComEd could still not hope to acquire power at a below-market price.

Q. Are the suggestions by Opponents, particularly in the rebuttal testimony of Drs. Steinhurst (CUB/CCSAO Ex. 4.0) and Reny (AG Ex. 4.0), that ComEd could obtain electricity at below open market rates by directly managing individual supply portfolio assets, or potentially by bargaining directly, sensible?

A. No. These suggestions both misunderstand the market and seriously misconceive ComEd's bargaining position. While this subject is also addressed by other ComEd witnesses, including Drs. LaCasse and Hogan, I want to make two fundamental observations.

First off, no market supplier of wholesale power and energy must or will sell at below open-market rates. In a modern regional energy market, ComEd is not a monopsonist and has no "buyer's power" that it can use to drive rates down. Sellers, especially in a broad competitive market, remain free to negotiate bilateral sales to a variety of buyers or to sell into the PJM market if ComEd's offer is worth less to them. So long as they have a unit that is economically efficient to run, they simply do not face a choice of either selling to ComEd or leaving their units fallow.

Moreover, the notion that there are benefits that a long-term contract can offer to a seller that the spot market cannot is certainly true, but misses the point. Sellers are not limited to the spot market. They can arrange for longer-term sales, and can hedge short-term sales financially. Furthermore, there are benefits <u>and</u> <u>costs</u> of long-term arrangements to both buyers and sellers -- locking in prices and delivery obligations is a two-edged sword. But, whatever the terms of a purchase -- be it the length of the contract, or some other term -- no seller has the obligation or incentive to enter into a deal with ComEd at a price lower than could be obtained from the open market on the same terms, taking into consideration the risks of the particular deals. In short, "the market is not stupid" and suppliers have no reason to offer to sell electricity at a "below-market price."

Q. Dr. Steinhurst (CUB/CCSAO Ex. 4.0) in particular claims that the Illinois Auction Proposal is an effort by ComEd to abdicate its obligations to its retail supply customers. Is this claim accurate?

A. No, it is not. ComEd is seeking to escape none of its burdens as a utility, and the Illinois Auction Proposal neither abdicates nor avoids any obligation ComEd has to its customers. No principle of reasonable utility management, nor any portion of the Act, as I understand it, requires ComEd to propose or receive approval for individual supply arrangements. Moreover, that sort of continuing "active" micro-management of individual resource procurement steps is not in ComEd's interests or that of its customers. The Illinois Auction Proposal, on the other hand, has been demonstrated to be an efficient, effective, just, and reasonable way of meeting those obligations.

Q. How does the Illinois Auction Proposal meet ComEd's obligations?

A. To implement the Illinois Auction Proposal, ComEd filed tariffs with the Commission, in accordance with the Act as I understand it, which specify how ComEd proposes to procure electric power and energy and certain other related services, and how ComEd proposes to recover its just and reasonable costs of doing so. The Commission is reviewing those tariffs in this proceeding. Nothing in those tariffs relieves ComEd of any responsibility that it has to provide utility service to its customers. Indeed, the Illinois Auction Proposal is a reasonable and beneficial means of acquiring electricity ComEd's customers need. The processes embodied in its tariffs, which use market forces to keep prices as low and stable as possible, are a particularly beneficial means to customers of meeting those obligations and of managing ComEd's supply portfolio.

Moreover, the transparent, competitive acquisition processes that underlie the Proposal -- and that were identified, discussed, developed, proposed, are now being considered, and (if approved) will be reviewed and further adapted in the future -- were not selected by accident or default. The Proposal reflects ComEd's (and many other parties') careful consideration of current and projected market conditions and a wide variety of procurement strategies, all informed by the Commission's exhaustive Post-2006 Initiative. The Proposal includes not only the comprehensive regulatory review in this Docket, during which any party is free to offer alternatives, but a detailed process for auction operation and ongoing continuous improvements and adaptations. That is, in my view, active management of the best sort. By contrast, nothing about reasonable utility management, nor any portion of the Act, as I understand it, requires ComEd to undertake

this task directly, let alone to assume -- along with its customers -- the considerable costs and huge risks that necessarily go with such a strategy.

Q. Dr. Steinhurst (CUB/CCSAO Ex. 4.0) in particular also claims that the Illinois Auction Proposal is an effort by ComEd to avoid prudence review of its supply decisions. Is this claim accurate?

A. No, it is quite wrong. The prudence, justness, and reasonableness of ComEd's proposal to secure the power and energy its retail customers need are central issues in this Docket. As I testified, ComEd's proposal is a reasonable exercise of judgment by its management based upon the evidence we now have and could have. I will not, and need not, repeat all of the evidence supporting the Illinois Auction Proposal. However, the notion that ComEd could do a better job by "going out on its own" and with information available only to it, of evaluating, selecting, and individually negotiating the acquisition of required resources than could the most efficient of a series of competing wholesale suppliers, each of whom has a powerful incentive to keep its costs as low as possible and shoulders market risk, does not square with the evidence.

What the Illinois Auction Proposal does do is prevent improper hindsight review. If the Commission agrees, based on the evidence before it, that it is just and reasonable for ComEd to procure power and energy using the proposed competitive procurement mechanism and if, after considering the data gathered before and during each auction, the Commission allows the results to become effective and ComEd signs the SFCs, it would be inappropriate to review that decision a second time, especially based on after-the-fact data not available at the time either that Rider CPP was approved or the SFCs were signed after the Commission's review of the auction results. Nothing in sound utility

policy, or Illinois ratemaking as I understand it, requires -- or even permits -- the Commission to go back and review again in hindsight purchases made under a process found prudent and reasonable.

Q. You testified earlier about the problems inherent in the implementation of a supply acquisition approach like that envisioned by the Opponents, particularly Dr. Steinhurst. To what problems were you referring?

A. I refer to the requests that the Commission reject the Illinois Auction Proposal and either open another proceeding itself, or require ComEd to make a new generic filing initiating another proceeding, in order to examine such concepts. It is senseless for the Commission to terminate this docket after three rounds of testimony, months of discovery, and lengthy and comprehensive hearings, only to initiate yet another formal proceeding to examine anew unspecified procurement options. Doing so would not only improperly fail to recognize ComEd's rights to a decision on the merits of our proposed tariffs, but also would wrongly disregard both the detailed record in this Docket and the comprehensive stakeholder process undertaken in the Commission's Post 2006 Initiative. After the conclusion of the Commission's comprehensive Post-2006 Initiative, ComEd filed tariffs embodying a proposal that best met the consensus goals and criteria identified and accepted by the participants in the process. ComEd had no obligation to propose other alternatives. The Illinois regulatory structure requires ComEd to support its tariffs, not other options. Moreover, the fact that no party has been able to offer any superior alternative is hardly a reason to reject ComEd's proposal or to criticize it for not offering other alternatives itself.

Q. Are there any other inappropriate features of the resource acquisition approach that the Opponents appear to embrace?

A. The Opponents argue that the Commission should, and in some cases must, judge ComEd's resource procurement decisions after the fact. This is fundamentally unjust and unreasonable. ComEd should be able to recover its costs of acting reasonably to acquire the power and energy its customers require. ComEd is not being bashful or coy about its proposal. We have described our proposal and explained plainly its benefits and why it is reasonable. We ask the Commission to accept the proposal. This is hardly an attempt to avoid review. But, more importantly, if ComEd's proposal is found reasonable, its right to recover its costs should not then be subject to after-the-fact review, under the guise of assuring "traditional" prudence, during which its actions can be second-guessed to see if superior outcomes could have in retrospect been obtained by some different strategy. That is neither "traditional" prudence review, not anything that is or should be tolerated in Illinois regulation.

Q. Several witnesses have argued that ComEd's divestiture of its generation some years ago was a choice by ComEd, and imply that this has implications for the Commission's review of the Illinois Auction Proposal.

A. ComEd's divestiture of its generation assets were one of many responses to restructuring of the industry, and cannot be viewed either in hindsight or in isolation. I need not and will not repeat again all of the benefits that have accrued to consumers as a result of restructuring. Those benefits have been identified in the testimony of earlier ComEd witnesses, and in numerous reports of and to the Commission, including many mentioned

therein. The benefits to consumers have run well into the billions. Those benefits have gone utterly unrefuted by any party.

Q. Is there any basis for reexamining the prudence in this proceeding of the divestiture of former ComEd nuclear assets, or for suggesting that ComEd is entitled to less than full cost recovery as a result?

A. No. ComEd is entitled to recover its cost of procuring the electricity required to serve its customers. The costs of suppliers selling to ComEd at rates subject to federal regulation are not subject to reexamination by the ICC. It is wholly inappropriate for the Opponents to suggest that the ICC, with hindsight, should now speculate about what ComEd's costs would have been had it made different business decisions five years ago.

Moreover, ComEd's divestiture, during the mandatory transition period, of its former nuclear generating facilities was authorized by the Act, and the divestiture of these facilities was viewed at the time as a reasonable regulatory and utility response to real and significant risks of owning and operating generation, especially nuclear generation facilities. The divestiture also helped create a market for other suppliers to compete in order to serve ComEd load.

The divestiture transaction was reviewed by the Commission in ICC Dockets 00-0230 and 00-0244 (Consol.) and the transfer was ultimately determined to be lawful under provisions of the Act establishing specific criteria for, and limitations on, such divestitures and generally barring subsequent review of transfers meeting these requirements. (*See* ComEd Group Exhibit 17.1; 220 ILCS 5/16-111).

Furthermore, the evidence presented by the Opponents provides no reason to believe that the decision to divest was imprudent or improper. Indeed, a main purpose of

the provisions authorizing such divestiture was to allow Illinois utilities like ComEd that were to be subject to lengthy retail rate freezes and multi-billion dollar rate reductions to also reduce their costs and risks. This was reflected in the Commission proceeding concerning this divestiture, including in sworn testimony that ComEd's continued ownership of these generating assets posed unique costs and risks to ComEd and its customers. (*See, e.g.*, ComEd (Group) Ex. 17.1, Supplemental Direct Testimony of Robert McDonald, ICC Docket Nos. 00-0230 and 00-0244 (Consol.), lines 76-151). The narrative testimony of Mr. McDonald in that docket is attached hereto as ComEd (Group) Exhibit 17.1, which testimony I attach now only for the purpose of demonstrating the information that was before the Commission at that time. I also hardly need remind the Commission that, at the time, owning nuclear generating facilities was viewed as a mixed blessing, and the value of the former ComEd units was written down to well below their original cost.

Q. Dr. Rose (AG Ex. 5.0) claims that the trend in the country is moving against restructuring. How does this view bear on ComEd's proposal?

A. It does not. Illinois has made a policy choice to restructure its electric industry, and as I and others have observed, that effort has been successful for customers as well as the industry. Dr. Rose's claims that some states, particularly in other parts of the country and with very different markets, are backing away from restructuring take nothing away from our successes. Nor do they say anything about the benefits of restructuring recognized and reported by other authorities, including by PJM and independent economic observers, where markets have been allowed to function. ComEd Exhibit 17.2 contains exemplar reports of recent independent studies determining that restructuring efforts, including in

other jurisdictions, have resulted in substantial consumer benefits. Dr. Rose's implication that there is national movement toward the conclusion that restructuring and reliance on markets is not desirable does not square with those data.

Q. Mr. Effron claims (AG Exhibit 3.0, at 3, lines 20-23) that ComEd's proposal can be expected to result in rate increases to ComEd's customers of more than $1 billion annually. Is Mr. Effron's statement accurate?

A. No. Mr. Effron is wrong. Nothing in his analysis suggests that ComEd's proposal will result in any price increase, let alone one in the amount he claims. Indeed, his calculation is wholly irrelevant to the question of whether the proposal should be adopted. The fact that prices and costs are higher now than in the past, especially in terms not adjusted for inflation, is not a criticism of ComEd's plan. If total rates rise after the end of the transition period, as we expect they inevitably will, it will not be <u>because</u> of the Illinois Auction Proposal. Bundled retail rates will have been frozen for nearly a decade, and for many customers have been cut 20%, while costs of generating electricity overall, including fuel and other costs, have inevitably risen. It is both incorrect and disingenuous to attribute to ComEd's proposal -- which will produce the lowest costs available in the market -- anticipated price increases that reflect rising costs of generation and not the means by which we acquire supply.

Q. How did Mr. Effron arrived at his claim?

A. Mr. Effron purports to estimate the "additional cost to ratepayers" by comparing two prices. The first is the average 2004 price under a contract executed more than several years ago between ComEd and Exelon Generation LLC for ComEd's supply

requirements. The second price is an estimate of the post-2006 market price for ComEd's supply requirements.

Q. Why is that calculation irrelevant?

A. Mr. Effron's calculation does not compare the costs to ratepayers under ComEd's auction proposal versus the costs under an alternative supply proposal. Instead, he simply compares prices under a historical wholesale supply contract executed at one time with an estimate of market prices at a different time and for electricity delivered in a different period. As we know from the increases in energy prices over the past few years, market prices (and the costs of doing business) are constantly changing. Forward market prices have also changed over time, and forward market prices for one delivery period differ from forward market prices for another delivery period. Even if his prediction of future forward prices were perfect, Mr. Effron's analysis quantifies the changes in market prices due to changes in the market environment over time; it does not provide any insight into the difference between ratepayers' costs under ComEd's auction proposal versus under an alternative supply proposal.

Q. Do you have any other comments regarding Mr. Effron's analysis of the "additional cost to ratepayers"?

A. Yes. None of my statements above concerning the relevance of Mr. Effron's calculation should be interpreted as an implied verification of any of the data that Mr. Effron uses.

Q. In your rebuttal testimony, you stated, "The fact that ComEd's [electricity] costs are determined by a market price [under ComEd's auction proposal] is no different than the way ComEd's costs of coal, natural gas, trucks, wrenches, power lines, transformers,

computers, and even wages have historically been determined. ComEd has certainly not been found imprudent in the past when it acquired resources to serve its customers at the lowest market price." (ComEd Exhibit 9.0, lines 489-493) Mr. Effron argued that the two key differences are that none of the resources that you listed were purchased from an affiliate, and that with the exception of coal and natural gas, all of the costs that you identified were included in the ComEd's base rate cost of service and were not recovered by means of a fully reconciling, dollar for dollar, pass-through to ratepayers. (AG Exhibit 3.0, at 8, lines 1-20) Are these two points relevant to the status of the market price of electricity as an exogenously determined cost of ComEd?

A. No. Mr. Effron provides no reason why affiliate purchases are a distinction relevant to this argument. The sale nonetheless is at a market price and establishes ComEd's costs. Moreover, ComEd does not propose to purchase electricity through an affiliate contract under the Illinois Auction Proposal; Exelon Generation can at best compete in the auction on a non-discriminatory basis. As for his second argument, it is simply beside the point whether costs in the past were recovered through base rates, the fuel clause, other riders, or some other mechanism. The point is that the market price that ComEd paid set ComEd's costs, and the regulatory inquiry, whether in a rate case or a rider reconciliation proceeding, was focused on whether ComEd procured the product or service prudently, not whether the prevailing market price charged by vendors met the standards of rate regulation. In any event, by his own admission, several of the historical purchases that I identified meet Mr. Effron's own second standard.. The point is clear, whether he concedes it through two illustrative examples or eight.

Q. Mr. Effron also claims that Exelon Generation is earning huge profits and will stand to earn even bigger profits if the Illinois Auction Proposal is approved. Is he correct?

A. No. While I am not privy to non-public data about Exelon Generation's actual or forecast earnings, one need not be privy to such data to see the serious errors in his calculations and the distorted conclusions that he draws from them. In particular:

- Mr. Effron's calculations provide no basis for concluding that reported Exelon Generation profits are due to its contract to serve ComEd load, nor for reaching any conclusion about the profitability of that contract or the appropriateness of its pricing. Moreover, whatever profits Exelon Generation did earn from sales to ComEd do not come from increased payments by retail customers; those rates have been frozen at levels based on mid-1990s costs, and for residential customers cut by 20%.
- Serving ComEd full requirement load requires Exelon Generation (as it would any seller) to own or acquire a portfolio of resources, including resources which must be acquired at a market price which is substantially above the price of either the output of baseload units or the current contract price. You cannot calculate a sellers margin by simply comparing the market price of the resources required to service full requirements load with the operating costs of base load generation, or the price of its output.
- Mr. Effron's calculations reflect an after-the-fact bias that is present in other testimony of the Opponents as well. There is nothing wrong with Exelon Generation, or any supplier, earning a profit when it accepts risk and the market moves in its favor. I have little doubt that Objectors would be unsympathetic to

requests for relief from unfavorable contracts in the event the market moved in the other direction.

- There is no reason to believe that Exelon Generation's profits will increase linearly as Mr. Effron implies. No suppliers' costs are fixed, and as the market rises so does the cost of resources ExGen must buy. Moreover, the margin to Exelon Generation or any vendor is not a function of ComEd's procurement mechanism, it is simply a function of the market. The same expected profits would be realized by market sales.
- Exelon Generation's profits, or losses, have nothing to do with this proceeding so long as ComEd proposes to purchase at a non-discriminatory competitive market price.

It appears, instead, that Mr. Effron's testimony on this subject is simply that the Commission should penalize ComEd by denying it recovery of its actual costs because its affiliate can make profitable sales at market prices. Although Mr. Effron's testimony misses, or deliberately ignores, this basic point, it should go without saying that the ICC regulates ComEd and ComEd, as an Illinois utility, is appropriately awarded and entitled to a just and reasonable return in its rates. Exelon Generation is not an Illinois utility and is not subject to Illinois rate regulation. It takes risks in the market, including the considerable risks of operating nuclear units. From the perspective of Illinois ratemaking, its returns are neither assured nor capped, just like any supplier in the competitive marketplace. However, many of Exelon Generation's activities are subject to FERC regulation, which is exclusive in the case of wholesale transactions, and to the

extent that Mr. Effron implies that Exelon Generation's earnings indicate that it is collecting unjust or unreasonable rates, FERC has not agreed.

Q. In sum, what conclusions should the Commission draw about the alternatives presented in the Opponents' rebuttal testimony?

A. As in their direct testimony, there are no practical alternatives offered in the Opponents' rebuttal testimony. (The notion of an auction with "price caps" alluded to for the first time in the rebuttal testimony of AG witness Prof. Reny (AG Ex. 3.0) is both completely undeveloped and not supported by the AG's other witnesses.) It is also ironic that the Opponents complain -- incorrectly -- that there has been no consideration of alternatives, while filing some 300 pages of testimony that contained no alternative to consider. If there was a better proposal or an improvement to be made to ComEd's, this proceeding was the opportunity to present evidence of it, just as other parties made constructive proposals. Instead, the Opponents asked the Commission only to needlessly and dangerously return to square one and remit ComEd and its customers to an undefined generic procurement litigation process.

Moreover, as I testified in rebuttal (ComEd Ex. 9.0), any realistic alternative will necessarily require ComEd to procure from the market and at market prices. None of the Opponents' witnesses identify any way in which sellers can be induced to sell electricity below its market value. As is explained in more detail by other witnesses, ComEd has no special power as a buyer, and for a contract and resource of a given type, no ability to command below market rates.

The Illinois Auction Proposal Has Evolved to
<u>Incorporate Sound Suggestions and Improvements</u>

Q. How has the Illinois Auction Proposal responded to proposals and suggestions made by stakeholders in testimony and elsewhere?

A. ComEd has been open throughout this process to suggestions of all stakeholders that could improve the Illinois Auction Proposal. This is entirely consistent with its genesis in the stakeholder-focused Post-2006 Initiative conducted by the Commission. Among the numerous improvements and modifications made in response to testimony in this docket are both changes to the tariffs themselves and changes to the auction process not reflected in tariffs. Various changes to the tariffs made in response to suggestion of other parties are described in detail the Rebuttal and Surrebuttal Testimony of Messrs. Crumrine and Alongi (ComEd Exs. 13.0 and 21.0). Other such changes to the Illinois Auction Proposal are described in the Rebuttal and Surrebuttal Testimonies of Mr. McNeil and Dr. LaCasse (ComEd Exs. 10.0, 11.0, 18.0, and 19.0). For the convenience of the Commission and parties, ComEd commits to provide in its post-hearing briefs comprehensive lists of the revisions reflected in the record through the end of the hearing.

Q. Has ComEd accepted any additional suggestions made in the rebuttal testimony of the parties?

A. Yes. In particular, ComEd:

- Agrees, in the interest of resolving issues, to accept the suggestion to reduce the upper limit on the size of customers included in the CPP-B product group from 1000 kW to 400 kW and to make the "default" bundled service for those customers an annual product with hourly service being optional, provided that the window in which customers coming off of RES service, hourly service, PPO

service, or ISS service (in the initial period) can elect the annual product is limited to 30 days. Moreover, provided that these revisions are adopted as a group as proposed, ComEd will accept the elimination of the Migration Risk Factor component of the translation mechanism. Further details concerning ComEd's integrated response to these suggestions in found in Mr. McNeil's surrebuttal testimony (ComEd Ex. 18.0).

- Agrees to revise language in Rider CPP defining in more detail the limited class of circumstances under which refunds can be made in response to errors in the calculation of charges.
- Proposes revised SFCs that continue to make good on our commitment to work to harmonize ComEd's SFCs with Ameren's. (We also understand that Ameren will be proposing revisions in its docket that reflect its parallel work in this respect). The revisions to ComEd's proposed SFCs are discussed in more detail later in this testimony.
- Submits a joint auction timeline applicable to both its proposed auction and Ameren's.
- Submits a revised and refined task plan for auction management.
- Agrees to continue using the existing retail peak and off-peak definitions.
- Agrees to revised confidentiality rules in response to suggestions from witness Bollinger.

Q. You testified that ComEd proposed clarifying the language of Rider CPP specifying when refunds are an appropriate and permissible remedy for errors in calculating charges. Why has ComEd done this?

A. All ComEd has ever wanted to accomplish through the accuracy assurance mechanisms proposed in Rider CPP is to recover our true costs -- no more and no less. We agree with Staff that a refund remedy may be appropriate if we make a mathematical error as well as if we fail to use the correct expenses or revenues figures per the applicable definitions and formulae in the tariff.

Q. Staff witness Steven Knepler (Staff Ex. 18.0) also proposes eliminating other language making clear that rates calculated under Rider CPP may go into effect without further review by the Commission and that refunds such as you describe are limited to numerical errors and not after-the-fact inquiries into the actual procurement costs. Are these changes acceptable?

A. No, they are not. The consequences of these seemingly minor tariff revisions cannot be understated; they would be fatal to the effective operation of the auction process and are of sufficient importance that ComEd cannot support the process without them. The proposed deletions should and, if the auction process is to be successful, must be rejected. Without the assurance that charges can go into effect without still additional regulatory action, parties may argue that retrospective "prudence" review based on subsequent events is permitted, or even required. Indeed, Mr. Knepler recently candidly admitted that if his proposed deletions are accepted, the limitation on retroactive hindsight changes to charges collected by ComEd from retail customers and used by ComEd to pay suppliers will be crippled. (Response to Data Request ComEd-Staff 3.35).

As I have testified, it is absolutely fundamental to the proposal that the Commission's review (subject to the specific exceptions we identify in the tariffs and testimony) of the prudence of the auction process be prospective and contemporaneous,

and occur in this proceeding and during the Commission's subsequent review of each auction prior to the execution of the resulting SFCs and the charges going into effect. This is not just a question of fairness to ComEd, which is entitled to recover costs incurred under SFCs entered into pursuant to an approved auction process and auction results allowed to become effective by the Commission[1]. If suppliers believe that there is regulatory risk to this recovery, or that the prices at which that they agree to sell power and energy to ComEd may not be includable in retail rates without further regulatory action, the auction process simply will not work. Customers will be losers.

Q. Are there any other comments that ComEd has agreed to accommodate?

A. Yes. Constellation Energy Commodities Group witness Smith (CECG Ex. 2.0) raises a concern that the trigger thresholds under the mitigation plan proposed by Staff witness Peter Lazare may be exceeded for all customer groups in the Blended Segment. At this time, ComEd does not anticipate that all customer groups as defined in the current Blended Segment will exceed Mr. Lazare's proposed thresholds.

Mr. Smith also expresses concern over how the mitigation plan might impact bidding suppliers' assessment of the risk of customer migration to and from bundled service. ComEd has proposed a structure that will limit suppliers' uncertainty regarding the migration analysis in lieu of the mitigation plan. As required, the "prism" mechanics will be made available to the suppliers via the data room, 105 days before the auction. It is believed the delivery service rate case and the subsequent mitigation plan thresholds

[1] We recognize that the Commission may review the prudence of ComEd's post-auction discretionary actions in response to certain default conditions under the SFCs, and my testimony here does not call that into question. This is also discussed in Mr. McNeil's surrebuttal testimony (ComEd Ex. 18.0).

will be established by June 2006. Suppliers can input their estimated auction-clearing price into the prism model, producing corresponding estimated retail rates, constrained by the known thresholds. With this structure suppliers will be better able to analyze proposed auction bids via vie the competitive supply market place.

<u>Inappropriate Revisions to the Auction Process Should Not Be Made</u>

Q. What is the purpose of this section of your surrebuttal testimony?

A. I will respond briefly to several suggested revisions to the manner in which the auction is designed and the auction process is conducted. Further detail and responses to other such points can be found in the testimony of Mr. McNeil, Dr. LaCasse, Mr. Parese, and Prof. Hogan (ComEd Exs. 18.0, 19.0, 20.0, and 25.0, respectively).

Q. IIEC witnesses Mr. Collins (IIEC Ex. 6.0, pp. 12-15) proposes that the ICC annually hold a docketed proceeding to consider revisions to the auction. Should the Commission accept this proposal?

A. No, the ICC should not automatically commence a docketed proceeding each year to investigate possible improvements to the auction process. Such a proceeding is both unnecessary and would, ultimately, be counterproductive.

Q. Why it is unnecessary for the ICC to determine in advance to hold annual formal proceedings?

A. ComEd's proposal already includes a fair, full, and open opportunity for parties to present comments on, reactions to, and suggestions for improvements to, the auction process, after each and every auction. Mr. Collins candidly acknowledges several of the components of that process in his testimony. (IIEC Ex. 6.0, ll. 242-53). There is no

reason to believe that the comment process will be unfair or exclude any stakeholder. In addition to the nature of the process itself, ComEd has a history of fairly considering and responding to comments of other parties.

Moreover, when Mr. Collins implies that the nature of the process will unreasonably limit the ability of parties to comment or result in a bias toward "validation" of the auction, he is wrong. Nothing prevents parties from presenting relevant comments from whatever perspective they have, including the translation into rates and charges. The purpose of the third-party consultant's report is to assess the outcome of the auction, and that assessment is not, as Mr. Collins surmises, limited in some way that prevents analysis of whether the auction is producing low cost results or is likely to continue to do so prospectively.

Q. Why would it be counterproductive for the ICC to determine in advance to hold annual formal proceedings?

A. There are several reasons. First is the obvious burden, expense, and awkwardness of litigation. If any party wishes to commence a formal proceeding, they are entitled to ask the Commission to do so. Automatically initiating such proceedings simply imposes those costs without regard to need or the fact that most proposed revisions and improvements are more efficiently and productively discussed in an informal process. Indeed, the pendency of a formal process will likely chill and reduce the effectiveness of the informal discussions.

Moreover, the Illinois Auction Proposal, unlike procurement mechanisms in other states, will be largely embodied in utility tariffs. Holding an annual docketed proceeding would amount to annually initiating a rate-type case. Such proceedings are not processed

rapidly, even putting aside the fact that they can spawn appeals. We do not have a procedure like New Jersey's in which the Commission can initiate and order revisions in an abbreviated and, from the perspective of Illinois procedure, irregular proceeding. What is more, given that the experience from one year's auction will not be digested, and parties' views on prospective improvements not informed, until some weeks or months after each auction is complete, it is simply not practical to commence a tariff investigation, and to subsequently file tariffs subject to suspension and comment, each and every year.

Of course, contrary to Mr. Collins' assumption, there is nothing in ComEd's proposal that would prevent the Commission from opening a docketed proceeding to investigate the procurement tariffs if appropriate grounds existed to do so. Its discretion in that regard should be preserved.

Q. Messrs. Domagalski and Spilky (CES Ex. 6.0, ll. 529-43) briefly argue that the Commission should initiate a separate docketed proceeding to consider and regulate new procurement process communication materials. What is ComEd's recommendation concerning this notion?

A. It should be rejected. Initiating such a docket is impractical given the time the parties have to implement the auction and the need for communication. Moreover, a formal proceeding is plainly not the venue in which to discuss such matters, even were it appropriate to propose advance review, and even were there sufficient time to commence and complete such a proceeding before communications should begin.

Apart from the inappropriateness of a formal proceeding, however, the Commission should not attempt to dictate or regulate in advance the specific

communications that utilities have with customers. The fact that ComEd is an IDC hardly adds currency to their suggestion. The IDC rules impose the required restraints and ComEd has been, and remains, careful to abide by them. There is simply no need for yet another proceeding.

<u>The SFCs are Appropriate Bases On Which To Base Market Values</u>

Q. Ms. Juracek, I now ask you to turn to the section of Dr. Laffer's rebuttal testimony concerning "futures contracts." (BOMA Ex. 3.0, pp. 24-25). How would you summarize Dr. Laffer conclusions?

A. Dr. Laffer claims that "ComEd's SFCs are not futures contracts" and that my "conclusion that ComEd's SFCs are exchange traded or other market traded futures contracts is incorrect." The sole reason cited for this claim is his argument that "a futures contract specifies a definite quantity to be delivered at a definite time, or for a definite period." (Citations omitted). Because the load served under a vertical tranche contract will vary with ComEd's total load, he concludes that they are not futures contracts and could not be traded on an exchange. In support of this claim, he cites nothing but his direct testimony, to which I have already responded in detail.

Q. Aside from the rebuttal testimony you already offered (ComEd Ex. 9.0), how do you respond to Dr. Laffer's renewed claims in his rebuttal that the SFCs are not futures contracts?

A. There are several brief points that should be noted.

First and foremost, as before, Dr. Laffer testifies about his view of the definition of a "futures contract" under the Commodity Exchange Act ("CEA"). Dr. Laffer simply presumes that the SFCs are not "an exchange traded or other market traded index, options

or futures contract or contracts" under the Illinois Public Utilities Act because they are not a CEA futures contract.

I did not testify that the SFCs are "futures contracts" as that term might be understood today under the rules of the Commodity Futures Trading Commission ("CFTC"). The Illinois Public Utilities Act does not adopt or reference the CEA definition. My testimony was that the SFCs and the products and prices they represent fall within the market value determination methods permitted by Section 16-112 of the Illinois Public Utilities Act, which include, but are not limited to, methods based on "futures contracts" as Dr. Laffer is apparently using that term.

Moreover, Dr. Laffer does not state why it would be appropriate to apply the CEA definition under the Act. This is of particular concern because application of the CEA's (and Dr. Laffer's) definition would frustrate the Public Utilities Act's purpose of using the best available market-supplied information -- in this case, the SFC auction market price -- to determine the value of power and energy "applicable to the market in which the utility sells …." Indeed, Dr. Laffer does not mention Section 16-112 of the Public Utilities Act at all in his rebuttal testimony. Moreover, Dr. Laffer completely ignores both Commission precedent interpreting that Act and the testimony on Staff witness Mr. Zuraski's on this subject.

Q. What are the remaining observations you have on Dr. Laffer's rebuttal testimony on this subject?

A. In addition to ignoring the Public Utilities Act, Dr. Laffer offers no reason why the SFCs could not possibly be traded on any exchange or market on which futures contracts are traded. The SFCs certainly do not prohibit it by their terms or by their structure.

Moreover, I am not aware of any limit on the type of contract that a designated contract market can trade, so long as it does not list "securities" for trading.

Finally, while I am not a lawyer (and neither is Dr. Laffer), I do not believe that Dr. Laffer's fixed quantity litmus test for a futures contract under CEA is even right. As I understand it, a futures contract under the CEA does not have to call for the delivery of a definite quantity and I am aware of such contracts that do not. For instance, weather futures, which are undeniably traded on exchanges, obligate the contract seller to pay a variable amount depending on the degree days experienced, a variability quite similar to that resulting from varying load. The definition cannot be as simplistic as Dr. Laffer makes it out to be; nor can it wholly exclude variable quantity contracts.

Q. Is there anything else missing from Dr. Laffer's discussion of this issue?

A. Yes, Dr. Laffer fails to consider the practical reality of the how the SFCs will function in the Illinois electric market. I testified in rebuttal that the SFCs are undoubtedly contracts for future delivery since the "specified product(s) are to be delivered at specified future time period(s), at specified delivery point(s), and at price(s) locked in by the SFCs, protecting against price volatility. They are, per their very terms, "Forward Contracts" and their signatories are "Forward Market Participants." I also pointed out that they were undoubtedly "market traded," regardless of whether a secondary market in SFCs developed, because "the auction participants compete for and auction winners supply to ComEd, via standardized contracts, a Competitive Electricity Supply product that includes energy, capacity and ancillary services as specified in the SFCs for each auction." Dr. Laffer offers no response.

Proposed Additional Modifications to the SFCs

Q. What is the purpose of this section of your testimony?

A. The purpose of this part of my testimony is to discuss the various proposals made in rebuttal testimony to further revise the SFCs.

Q. Section 6.1 of ComEd's SFCs allows ComEd to establish less restrictive credit requirements under Section 6.1 in a non-discriminatory manner. ICC witness Rochelle Phipps argues that the Commission should reserve the right to conduct an after-the-fact review of any such reduction in credit requirements. What is your response?

ComEd has already indicated, in response to Staff's (FD) Data Request 4.01, that it does not expect that it would move to establish less restrictive credit requirements without conferring with the ICC or ICC Staff. In view of this fact, ComEd has removed this provision from the draft SFCs. This will remove any concern about the prudence of any reduction in the credit requirements.

Q. How do you respond to Ms. Phipp's argument that ComEd has not provided a reason for the provision in Section 6.4 of the SFC which requires a notching down of Moody's corporate issuer credit ratings for a supplier if that supplier does not have a senior unsecured debt rating?

A. ComEd expects that the situation addressed by this credit provision would rarely, if ever, occur. This is because if an issuer has unsecured debt, the issuer will usually have a senior unsecured debt rating, making any need for notching down its corporate issuer rating moot. Ms. Phipps does not object to such notching down for S&P and Fitch, but argues that Moody's issuer ratings are already equivalent to unsecured credit ratings.

This is generally, but not always, true. ComEd has reexamined the issue in light of Ms. Phipp's observation, and is revising Section 6.4 as follows:

> "In the event that senior unsecured debt ratings are unavailable from S&P and Fitch, the corporate issuer rating, discounted one notch, will be used. In the event that senior unsecured debt ratings, or their equivalent, are unavailable from Moody's, the senior secured debt rating, discounted one notch, will be used."

I believe this is responsive to Ms. Phipp's testimony on this matter.

Q. What is your response to the continued insistence of Constellation's Mr. Smith that Section 15.13 of the SFC be modified to include a new paragraph that would allow the Commission to determine that certain new taxes that might be imposed on Energy or Capacity and for which suppliers would be responsible can and should be passed on to retail customers?

A. ComEd is unaware of any such tax that has been imposed anywhere in the United States, and certainly Mr. Smith does not cite any example. There is no reason to create a provision for a speculative new tax for which there is no precedent. Moreover, and in any event, the SFC is designed to impose on each party to the contract the risks inherent in that party's business, and to let the consequences of such risks, if they occur, fall where they arise. This is normal commercial practice and should be adhered to here as well.

Q. Mr. Smith also suggests that Section 13.2 of the SFC is unclear regarding whether the supplier or ComEd could be responsible for new or increased charges relative to Network Integration Transmission Service ("NITS"), and proposes using the delivery point as the point of demarcation in order to clarify this risk allocation. How do you respond?

A. ComEd disagrees that the contract is ambiguous as to which party – ComEd or the supplier – is responsible for new or increased charges relative to NITS service. The items and changes for which each party – ComEd or the supplier – are responsible are set forth in detail in Appendix C to the SFC. Appendix C makes it clear that ComEd is responsible for new or increased charges relative to NITS service. However, ComEd is not opposed to including an additional statement in the SFC that makes even more clear that ComEd takes the risk for those items for which it is shown as responsible in Appendix C, including NITS service.

Q. In general, the view of various parties has been that ComEd's and Ameren's SFCs should be harmonized to the extent possible. Have ComEd and Ameren taken any steps to achieve such harmonization?

A. Yes. ComEd and Ameren agree that, to the extent practicable, their SFCs should be similar in structure and substance. To that end, ComEd and Ameren representatives have met and have agreed on a common structure for their SFCs and, to the extent practicable, have made the substantive provisions of their respective SFCs the same or substantially similar. ComEd Exhibit 17.3 is a black-lined version of the CPP-B contract ComEd submitted with its rebuttal testimony in this docket which highlights ComEd's and Ameren's harmonization efforts.

Q. Do any substantive differences remain between the Ameren and ComEd SFCs?

A. Yes. The situational and policy differences that ComEd and Ameren agreed should remain in the agreements include:

- Under the Ameren contract, Ameren purchases ancillary services. Under the ComEd contract, the supplier must purchase ancillary services.

- While both Ameren and ComEd retain the obligation under state law to procure capacity and energy to serve retail load, Ameren is the Load Serving Entity ("LSE") for MISO purposes in the Ameren contract, while in the ComEd contract the supplier performs most LSE functions at PJM.
- The credit limit caps differ in the two contracts.
- With respect to Mark to Market terms, ComEd has included more detail regarding the specific methodology in order to clarify any potential questions regarding how the longer-duration contracts (65-months for the first auction, and 60-months for subsequent auctions) will be marked to market.
- The contract duration differs between the two contracts, as ComEd will be procuring some power and energy under contracts with five year terms.
- ComEd has agreed to contract language suggested by the suppliers providing that, following an event of default, if the non-defaulting party elects to terminate one contract, this triggers termination of all contracts between that supplier and ComEd. Ameren has not agreed to this, and may elect to terminate individual contracts while retaining others in the event of supplier default.
- ComEd has also agreed, as I discussed earlier in my surrebuttal testimony, with the recommendation by suppliers and others to change the CPP-B product to include 400 kW to 1,000 kW customers. Ameren has not agreed to this.

Q. What is your response to Mr. Salant's argument (1) that there should be a 60-day period after the entry by the Commission of a final order in this docket for completing a compliance filing incorporating the revised SFCs; and (2) that not only Ameren, ComEd and the ICC Staff, but also suppliers, should participate in this compliance filing process?

A. ComEd does not agree with Mr. Salant's suggestion. As I just pointed out, Ameren and ComEd have already met and conformed their SFCs in structure and substance with a few exceptions. Thus, the 30-day compliance period should be more than enough time to complete any necessary conforming revisions. In other words, by the time of the final order, any remaining substantive issues will have been decided by the Commission, and the changes to the already harmonized ComEd and Ameren contracts should be largely mechanical and administrative in nature in response to the Commission's order.

Providing for a formal period for still additional supplier input, as Mr. Salant suggests, is both unnecessary and unwise. ComEd and Ameren have been engaged in a dialogue with suppliers on the SFCs since December, and that dialogue has continued in these proceedings. By the time of a final order in this proceeding, all of the suppliers' issues will have been addressed either by ComEd through the revisions that we have incorporated in the SFCs or by the Commission in its order. Further input by suppliers after the final order would be unnecessary. It is essential that the Commission issue an order approving the revised SFCs by January or there will be further regulatory uncertainty that could affect the ability to run a successful auction. The Commission should, therefore, reject this suggestion.

Q. Mr. Huddleston again complains (Dynegy Ex. 1.2, pp. 5-6) that under the SFCs, suppliers will not be paid if the energy is not in fact delivered to customers because of alleged imprudent operation and maintenance of ComEd's distribution system. Is this complaint valid?

A. It is not. Mr. Huddleston is proposing a different "product" than the one ComEd is willing to buy. What ComEd is purchasing is a full requirements supply product in

which it pays only for the energy actually used by or sold to customers, *i.e.*, electricity consumed. As I explained in my Rebuttal Testimony, Dynegy's proposes a different product with a "take or pay" characteristic requiring ComEd to pay for certain energy that is not in fact, delivered to, or used by its customers. Redefining the product in this way will inevitably lead to disputes concerning outages between ComEd and suppliers, which has the potential to dramatically increase ComEd's costs -- and ultimately the costs borne by consumers -- as well as to delay and confuse questions of when and in what amount payments are owed to suppliers for purposes of Rider CPP. Indeed, Mr. Huddleston never addresses obvious practical problems with his proposal, such as how ComEd would recreate its customers' "but for" energy consumption in order to pay suppliers for energy not delivered.

Apart from that, Mr. Huddleston's proposal would inevitably give rise to after-the fact prudence reviews of many distribution outages in the context of supplier, not customer, complaints. The reliability requirements now imposed upon Illinois electric utilities by statute (Section 16-125) and regulations (83 Ill. Admin. Code Part 411) give effect to ComEd's obligations to its customers. Moreover, they provide more than enough incentive for ComEd to keep outages due to imprudence to a minimum. Mr. Huddleston's proposal could create overlapping, and potentially inconsistent, reliability obligations.

Mr. Huddleston also raises a concern regarding access to information about distribution outages. The Commission must remember that suppliers are bidding on a full requirements product and that small load variations, of the type distribution outages might create, will be commonplace hourly events which the suppliers must be prepared to

handle. That is the nature of the service that they are offering to provide. Distribution outages do not change that risk, since there is minimal system impact resulting from any single distribution outage. Moreover, ComEd will also provide historical load data to suppliers on the auction website. To the extent outages have occurred, they are reflected in that historical usage data and, thus, the risk will be factored into suppliers' bids. Baring any bizarre and catastrophic event, of which the suppliers (and everyone else would become promptly aware), providing this data will address the issue.

Q. Mr. Huddleston also continues to argue that Section 2.16(vii) of the SFCs should be amended to provide that the full amount of damages paid to ComEd by a RES be passed on to a supplier. Is his suggestion appropriate?

A. No, it is not. Section 2.16(vii) addresses a situation where a RES might pay an amount to ComEd as damages, penalties, or forfeited security because of the RES's failure to provide notice of a RES customer switching back to ComEd's full requirements service or because of an event of default by the RES. In that situation, Section 2.16(vii) allows ComEd to net out from the supplier's *pro rata* share of the damages, penalty, or forfeited security any amounts retained by ComEd to offset costs or losses of ComEd due to the RES's lack of notice or event of default. Mr. Huddleston provides no rationale for denying ComEd recovery of such costs in the manner provided. If, as Mr. Huddleston seems to suggest, the costs to ComEd turn out to be zero, then ComEd will, under the provision as written, pay the full amount of the supplier's pro rata share of the damages, penalty, or forfeited security over to the supplier. However, it is much more likely that ComEd will incur real costs in such a situation and Mr. Huddleston provides no basis for

believing otherwise. Mr. Huddleston does not deny that if such costs are not recovered by ComEd from the RES, they must be recovered from customers.

Finally, Mr. Huddleston does not appear to deny that suppliers are already being compensated in full for switching risk in the clearing price bid, because that risk is an inherent part of the product they are bidding to provide. Given this, there is no reason they should also be paid -- again -- in the manner Mr. Huddleston suggests, regardless of the costs the utility might incur. This is inequitable.

Q. Mr. Huddleston also continues to complain that ComEd might be allowed to change its information and data transfer protocols without ICC approval. (Dynegy Ex. 1.2, p. 7). What action should the Commission take?

A. The Commission should reject his suggestion. It is ill founded. The fact, as Mr. Huddleston points out, that the ICC may in fact "from time to time modif[y] ComEd's protocols" in no way justifies requiring ICC approval each and every time a modification is made. As I pointed out in my rebuttal testimony (ComEd Ex. 9.0), having to seek ICC approval for each such modification would interfere unnecessarily with ComEd's conduct of its business and would not be an effective use of ICC time or resources. The details of these protocols are not established by tariff and he provides no basis for treating them as if they were. Moreover, Mr. Huddleston provides no reason why ComEd would be motivated, in upgrading or modifying its information and data protocols, to cause problems or unnecessary costs for suppliers who provide its customers with energy. Periodic modifications to and updating of information and data transfer protocols are a common feature of business today, and Mr. Huddleston has provided no

basis for denying ComEd the flexibility needed to make such upgrades and modifications efficiently and in a timely fashion.

Q. What is your response to Mr. Huddleston's argument that suppliers should have a role in helping to finalize the SFCs after a final order is issued in this proceeding?

A. My response to Mr. Huddleston is the same as my response to the similar argument by Mr. Salant. The changes to which Mr. Huddleston refers will be housekeeping changes only, and should not be an occasion for raising further substantive issues, as Mr. Huddleston appears to have in mind.

Q. Mr. Huddleston appears still to be uncertain about the provision in Section 4.1 of the SFC that the Term should run from the beginning of the hour ending 0200 EPT on January 1, 2007, and end on the hour ending 2400 EPT on the Termination Date. Could you provide further clarification?

A. Mr. Huddleston appears to be confusing the fact that the statutory definition of the mandatory transition period is "through January 1, 2007", on the one hand, with the date when ComEd's current supply contract with ExGen ends, on the other hand. The mandatory transition period, by statute, ends as of 12 AM CPT January 2, 2007. ComEd's supply contract with ExGen, however, ends as of 12 AM January 1, 2007 (midnight on the night of December 31, 2006). The latter is the "transition period" to which I was referring in my rebuttal testimony. Thus, as the SFCs provide, electricity under the SFCs must begin flowing with the hour ending 0100 EPT on January 1, 2007, not January 2, 2007.

Q. Other than the changes made to the SFCs to bring them into harmonization, are any other changes being proposed to the SFC?

A. Yes, there are several changes we are making at this time. Staff data requests FD 3.03 and FD 3.04 pointed out several typos in the SFC. One related to the definition of "Qualified Institution", and the other related to mis-references to other section numbers in Section 6.4(iii) on ComEd Exhibits 3.1 and 3.2, and Section 6.3(iii) of ComEd Exhibit 3.3. We have made the necessary corrections to those provisions.

In addition, we have revised Appendix D (MtM Exposure Amount Calculation Information) to the SFCs. While much of the change represents an attempt to harmonize this appendix with Ameren, we also provided more detail in response to Staff witness Schlaf's concern that we minimize the exercise of discretion in the Mark-to-Market calculation.

Also, ComEd has, in response to the recommendations of Staff and intervenors that ComEd's SFCs and Ameren's SFCs be harmonized to the greatest degree possible, revised its policy regarding credit exposure for CPP-H Suppliers. Under the original filed proposal, the credit exposure was fixed at $70,000 per tranche for the duration of the agreement. Under the revised proposal, the per tranche CPP-H Supplier credit exposure amount is equal to $5,000 times the number of full calendar months remaining in the delivery period. For example, if there are 12 calendar months remaining in the delivery period, the credit exposure will be equal to $60,000. For the first auction, the amount required will be $85,000 (17 x $5,000). However, the credit exposure amount declines over the course of the delivery period, reflecting a reduced level of risk for ComEd.

Finally, the bankruptcy laws were recently amended. ComEd's SFCs have been revised to reflect those amendments.

Q. Does this conclude your rebuttal testimony in this proceeding?

A. Yes, it does.