

**ILLINOIS COMMERCE COMMISSION**

**DOCKET NOS. 05-0160, 05-0161 and**

**05-0162 (consolidated)**

**SURREBUTTAL TESTIMONY**

**OF**

**TIMOTHY I. MOLONEY**

**Submitted On Behalf**

**Of**

**Central Illinois Light Company d/b/a AmerenCILCO,  
Central Illinois Public Service Company d/b/a Ameren CIPS,  
and Illinois Power Company d/b/a AmerenIP**

**August 29, 2005**

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**SURREBUTTAL TESTIMONY**  
**OF**  
**TIMOTHY I. MOLONEY**

**Q. Please state your name and business address.**

A. My name is Timothy I. Moloney. My business address is One Ameren Plaza,  
1901 Chouteau Avenue, St. Louis, Missouri 63103.

**Q. By whom and in what capacity are you employed?**

A. I am employed by Ameren Services Company as Managing Supervisor in the  
Credit Risk Management Department. In that capacity, I am responsible for  
managing and mitigating credit risk for various commodity businesses at Ameren.

**Q. Are you the same Timothy I. Moloney who previously filed rebuttal  
testimony in this proceeding?**

A. Yes, I am.

**Q. What is the purpose of your surrebuttal testimony in this proceeding?**

A. The purpose of this testimony is to respond to certain of the statements and  
concerns expressed by interveners in their rebuttal testimony in this case, in  
particular, those statements and concerns relating to the credit provisions of the  
standard contracts. Ms. Rochelle Phipps of the ICC Staff and Ms. Heather L.  
Dornbusch of Dynegy Inc. (“Dynegy”) raised credit-related issues in their

24           respective rebuttal testimonies. My failure to respond to a witness' statement or  
25           position should not be construed as an endorsement of same.

26   **Q.   Ms. Phipps recommends (at pp. 3 and 4) that: (1) the Commission reserve**  
27           **the right to conduct an after-the-fact review of any reduction in credit**  
28           **requirements undertaken by the Ameren Companies pursuant to Section 6.1**  
29           **of the Supplier Forward Contracts (“SFCs”); (2) the Ameren Companies**  
30           **clarify whether the SFCs permit them to restore the credit requirements to**  
31           **their initial level as circumstances permit; (3) in the event the Ameren**  
32           **Companies change their credit requirements for any SFC, they file a report**  
33           **with the Commission within 15 days; and (4) the Ameren Companies modify**  
34           **their proposed Rider MV to allow the ICC Staff or Commission to conduct**  
35           **an after-the-fact review of unilateral reductions in credit requirements**  
36           **implemented by the Ameren Companies. Please comment on these**  
37           **recommendations.**

38   **A.**   The Ameren Companies have reconsidered their position on the provision in  
39           Section 6.1 that would allow them to establish less restrictive creditworthiness  
40           standards in a non-discriminatory manner. These provisions have been the  
41           subject of ICC Staff data requests and testimony that indicate some level of  
42           concern regarding the use of this right. As noted in the Ameren Companies'  
43           response to ICC Staff Data Request No. FD 3.01, the intent is to have the credit  
44           provisions, as proposed by the Ameren Companies, apply to all suppliers through  
45           the duration of the agreement. In the event of unforeseen circumstances that  
46           could warrant the establishment of less restrictive creditworthiness standards, the

47 Ameren Companies believe that a review by the ICC Staff and/or Commission  
48 would be acceptable in advance of implementing changes. Therefore, the Ameren  
49 Companies will delete from their SFCs the language giving them the unilateral  
50 right to establish less restrictive creditworthiness standards.

51 **Q. Ms. Phipps objects (at p. 7) to the provision of Section 6.4 of the SFCs that**  
52 **provides for the “notching down” of Moody’s corporate issuer credit ratings**  
53 **in the event the Supplier has no senior unsecured debt rating from Moody’s.**  
54 **Please comment.**

55 A. The Ameren Companies agree to eliminate in Sections 6.4 and 6.8.a the “notching  
56 down” of corporate issuer credit ratings supplied by Moody’s.

57 **Q. Ms. Phipps also takes issue (at p. 7) with the fact that the Ameren Companies**  
58 **have not provided any quantitative analysis of the credit requirements**  
59 **contained in the SFCs. Please comment.**

60 A. While the Ameren Companies have not furnished the ICC Staff an empirical  
61 analysis of their proposed Table A credit limit caps, they believe, nonetheless,  
62 that they have provided, in response to the various data requests and within  
63 previously provided rebuttal testimony, relevant and useful justification regarding  
64 such credit limit caps. The Ameren Companies are proposing a credit limit cap of  
65 \$0 for sub-investment grade suppliers, consistent with New Jersey SFCs and more  
66 conservative than Maryland’s. They are proposing higher credit limit caps for the  
67 investment grade rating categories than New Jersey in partial recognition of the  
68 magnitude of the potential collateral postings that could be required of suppliers if  
69 power price curves were to rise materially following the auction. Nevertheless,

70 the Ameren Companies' proposed credit cap limits are more conservative and  
71 protective than those in place in Maryland and, in my view, are supportable from  
72 a credit risk management standpoint. In summary, the credit requirements are  
73 justified because they strike an appropriate balance between protecting the  
74 utilities and their ratepayers and attracting participation by qualified suppliers.

75 **Q. Ms. Dornbusch states (at p. 2) that the SFCs contain “lopsided credit**  
76 **provisions that raise the premium Suppliers will include to compensate for**  
77 **the added risk they carry in the event it is the Ameren Utilities that have**  
78 **financial difficulties as well as provisions that unnecessarily raise the costs of**  
79 **Suppliers when they have to provide credit assurance to the Ameren**  
80 **Utilities.” Do you agree?**

81 A. I do not agree. The SFCs propose to implement credit provisions that represent a  
82 balance of interests between: (1) protecting the utilities and ratepayers from  
83 default risk; and (2) adversely affecting participation by qualified bidders. We  
84 believe the credit provisions proposed by the Ameren Companies strike a  
85 reasonable balance of these interests. Later in this testimony, I provide additional  
86 details in response to more specific issues raised by Ms. Dornbusch.

87 **Q. In your rebuttal testimony, you noted that Dynegy sought credit-related**  
88 **language in the Ameren Companies' SFCs that it had not sought for**  
89 **Commonwealth Edison Company's (“ComEd”) SFCs. Ms. Dornbusch states**  
90 **in her rebuttal testimony (at p. 3) that this fact is no reason to reject**  
91 **Dynegy's proposed credit-related provisions because Dynegy and ComEd**

92           **reached an agreement whereby Dynegy agreed not to object to the credit-**  
93           **related provisions in ComEd’s SFCs. (See also p. 8.) Please comment.**

94    A.    The Ameren Companies recognize Dynegy’s right to raise credit-related issues in  
95           both the ComEd case and the Ameren Company case. However, we would note  
96           that Ms. Dornbusch reiterated in her rebuttal testimony at lines 45 through 47 that  
97           “Dynegy and ComEd were able to reach an accommodation that included the fact  
98           that Dynegy would not object to the credit-related provisions in ComEd’s draft  
99           SFCs except under certain circumstances.” The practical and inescapable  
100          implication is that Dynegy has found ComEd’s positions on the issues of bilateral  
101          credit, the 1.1 MtM multiplier and the draft letters of credit to be acceptable. The  
102          Ameren Companies’ positions on these issues are substantively identical to  
103          ComEd’s. If Dynegy has found that such positions are acceptable as used in  
104          ComEd’s SFCs, it seems reasonable to conclude that Dynegy could also find  
105          these same positions to be acceptable as used in the Ameren Companies’ SFCs.

106    **Q.    Ms. Dornbusch also criticizes the Ameren Companies (at various places in**  
107           **pp. 4 through 8) for not making the credit-related provisions in the SFCs**  
108           **bilateral. Please comment.**

109    A.    Requesting bilateral credit provisions is, in essence, a request for assurances that  
110           the Ameren Companies will perform in accordance with the terms of the proposed  
111           SFCs, including providing payment for services provided throughout the duration  
112           of the agreement. Dynegy should recognize, as it seems the commissions in New  
113           Jersey and Maryland did, that SFC agreements differ from agreements between  
114           unregulated parties for the sale of power. The SFCs are for the sale of power to

115 serve regulated public utilities' retail load and are not unregulated contracts  
116 between unregulated parties for the sale of wholesale power. The Ameren  
117 Companies, as regulated public utilities, are subject to the continuing regulatory  
118 scrutiny of the Commission. The Commission will most assuredly, in order to  
119 protect the interests of the Illinois ratepayers, continue to monitor the operations  
120 of the Ameren Companies' such that they will be able to meet payment  
121 obligations and deliver power in a consistent, stable, reliable fashion for the  
122 benefit of the Illinois ratepayers. While Commission oversight cannot eliminate  
123 the existence of credit exposure for the suppliers, such oversight serves to reduce  
124 the probability, although such probability is already very low, that the Ameren  
125 Companies would default on payments under the SFCs. Again, while suppliers  
126 may have measurable credit exposure to the Ameren Companies, the risk that the  
127 suppliers could actually realize credit losses should be recognized to be low. As a  
128 result, the Ameren Companies would assert that any credit premiums that Ms.  
129 Dornbusch anticipates will be embedded in the auction-clearing prices should  
130 arguably be commensurately low.

131 **Q. Ms. Dornbusch speculates at lines 138 through 144 that those who won**  
132 **tranches in states whose SFCs did not include bilateral credit requirements**  
133 **may forgo or curtail participation in the Illinois auction, that some potential**  
134 **participants in those auctions may have reduced participation in the auctions**  
135 **or avoided them altogether, and that pricing may have been lower if the**  
136 **collateral posting provisions had been bilateral. How do you respond?**

137 A. The facts are, auctions in other states without bilateral credit requirements have  
138 proven to be successful despite Ms. Dornbusch's misgivings. Another possibility  
139 that Ms. Dornbusch does not consider is the tranche winners in the other states  
140 may recognize that the risk of realizing credit-related losses is low, that such risk  
141 will not materially affect the suppliers' willingness to participate, and that pricing,  
142 as a result, may not ultimately include significant credit premiums related to the  
143 lack of bilateral credit. As previously noted, ComEd's proposed SFCs, as is the  
144 case with the Ameren Companies' SFCs, do not include bilateral collateral  
145 posting requirements, and Dynegy has not, to my knowledge, raised objections to  
146 these provisions in ComEd's proposed SFCs.

147 **Q. Ms. Dornbusch states (at p. 5) that "Dynegy's proposal is the lower cost**  
148 **option to consumers . . . ." with respect to the issue of bilateral collateral**  
149 **posting requirements. Do you agree?**

150 A. Ms. Dornbusch presumably assumes that the credit premiums built into supplier  
151 pricing would exceed the cost of collateral that the Ameren Companies would be  
152 required to post in the event that the SFCs contained bilateral collateral posting  
153 requirements. Without clear data to support this claim, the Ameren Companies  
154 are unable to agree with Dynegy's assertion. In the Ameren Companies' view, as  
155 has been done in other states, the suppliers should independently evaluate the risk  
156 of credit-related losses (which, for reasons stated earlier, the Ameren Companies  
157 would argue should be low) and should price the Ameren Companies' credit risk  
158 into their respective bids. Ms. Dornbusch seems not to recognize this has become

159 an accepted practice in other states, and that this approach has been used as an  
160 element of auctions that have been very successful.

161 **Q. Ms. Dornbusch reiterates (at p. 5) Dynegy’s desire for the Ameren**  
162 **Companies to eliminate the 1.1 multiplier from the mark-to-market**  
163 **calculation. She states in particular (at p. 9) that the Ameren Companies**  
164 **have not shown that a 10 percent adder is the proper way to value the credit**  
165 **risk posed. Has your view changed or do you still believe that this multiplier**  
166 **should be included in the SFCs?**

167 A. The proposed 1.1 multiplier clearly should be included in the Ameren Companies’  
168 SFCs. Although Ms. Dornbusch concedes at lines 180-181 that “Dynegy does not  
169 disagree that the multiplier may account for additional items,” she nevertheless  
170 asserts at lines 111-112 that eliminating the multiplier “is the less costly option  
171 because consumers do not pay for more credit than has been shown to be needed.”  
172 Without the 1.1 multiplier, the Ameren Companies would note that, in the event  
173 of default by a supplier, the utilities (and thus the ratepayers) could fully realize  
174 any and all credit exposure associated with capacity, capacity reserves, load  
175 shape, basis, odd lot and illiquidity premium. Furthermore, a multiplier has been  
176 justified and accepted for use in SFCs in other states, and as previously noted,  
177 Dynegy raises no objections to the same multiplier as proposed by ComEd.

178 **Q. As regards the Letters of Credit proposed by the Ameren Companies, Ms.**  
179 **Dornbusch states (at p. 6) that Dynegy’s proposed changes would reduce the**  
180 **cost of those Letters of Credit, thus reducing the cost to consumers. Do you**  
181 **agree?**

182 A. Transferability and automatic renewal are very common and important features of  
183 appropriately crafted Letters of Credit and are often considered standard features.  
184 Ms. Dornbusch does not directly address the cost of including these features and  
185 provides no evidence that such cost would exceed the value received in the form  
186 of appropriate and prudent credit protection. While following Ms. Dornbusch's  
187 recommendation to eliminate these features could potentially reduce the cost of  
188 providing a Letter of Credit, the absence of these features would introduce  
189 unacceptably high credit risks for the utilities and their ratepayers.

190 **Q. Does this conclude your surrebuttal testimony?**

191 A. Yes, it does.