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I N D E X

EXHIBITS	MARKED	ADMITTED
BOMA 1.0	e-Docket	360
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PROCEEDINGS

JUDGE WALLACE: Pursuant to the direction of the Illinois Commerce Commission, I now call Docket 05-0159. This is the matter of Commonwealth Edison Company and its procurement case.

May I have appearances for the record, please, starting with Commonwealth Edison.

MR. RIPPPIE: Good morning. On behalf of Commonwealth Edison Company, Glenn Rippie.

Also Paul Hanzlik, H-a-n-z-l-i-k, John Ratnaswamy, R-a-t-n-a-s-w-a-m-y, and John Rogers of Foley & Lardner.

MR. BRADFORD: Also for Commonwealth Edison Darryl Bradford, Staci O'Brien, and Rick Bernet.

MR. LAKSHMANAN: On behalf of Dynegey, Inc., Joe Lakshmanan, L-a-k-s-h-m-a-n-a-n.

MR. REICHART: Appearing on behalf of the Staff of the Illinois Commerce Commission, John Reichart, Carmen Fosco, Carla Scarsella, and John Feeley.

MR. ROBERTSON: For the IIEC, Eric Robertson and Conrad Reddick, R-e-d-d-i-c-k.

1 MR. ROSEN: Larry Rosen here on behalf of CUB.

2 MR. GOLDENBERG: On behalf the Cook County
3 State's Attorney's Office, Allan Goldenberg and
4 Marie D. Spicuzza, Assistant State's Attorneys.

5 MR. TOWNSEND: On behalf of the Coalition of
6 Energy Suppliers, the law firm of DLA Piper,
7 Rudnick, Gray, Cary US LLP by Christopher J.
8 Townsend.

9 MR. GIORDANO: For the Building Owners &
10 Managers Association of Chicago or BOMA, the law
11 firm of Giordano & Neilan, Ltd., by Patrick
12 Giordano, Paul Neilan, and Christina Pusemp.

13 MS. SATTER: Janice A. Dale, Susan L. Satter,
14 Susan Hedman, and Mark Kaminski appearing on behalf
15 the People of the State of Illinois.

16 MR. JOLLY: On behalf of the City of Chicago,
17 Ronald D. Jolly, J-o-l-l-y.

18 MR. STAHL: On behalf of Midwest Generation,
19 David Stahl, S-t-a-h-l, the firm of Eimer, Stahl,
20 Klevorn & Solberg, LLP, Chicago.

21 MR. AUGSPURGER: Morning, Your Honor. Thomas J.
22 Augspurger and Gregory K. Lawrence of McDermott,

1 Will & Emery, LLP, on behalf of Morgan Stanley
2 Capital Group, Inc., and J Aron and Company.

3 MR. FLYNN: Peter Trombley, T-r-o-m-b-l-e-y,
4 and Chris Flynn with Jones Day for the Ameren
5 Company.

6 JUDGE WALLACE: Anyone else?

7 MR. FITZHENRY: Edward Fitzhenry for the Ameren
8 Companies.

9 JUDGE WALLACE: Do we have some more witnesses
10 today?

11 MR. GIORDANO: Yes, sir.

12 BOMA would like to sponsor Dr. Arthur
13 Laffer.

14 JUDGE WALLACE: All right.

15 MR. RIPPIE: And the company has William
16 McNeil.

17 JUDGE WALLACE: All right. Will Dr. Laffer and
18 Mr. McNeil stand up, please. Raise your right
19 hands.

20 (Whereupon the witnesses
21 were sworn by Judge Wallace.)

22 JUDGE WALLACE: Thank you.

1 All right. Mr. Giordano.

2 MR. GIORDANO: Thank you, Your Honor. All
3 right. Let's go.

4 (Whereupon there was then
5 had an off-the-record
6 discussion.)

7 DR. ARTHUR LAFFER

8 called as a witness herein, having been duly sworn
9 by Judge Wallace, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. GIORDANO:

13 Q Mr. Laffer, would you please state your
14 name and business address.

15 A My name is Arthur B. Laffer. My business
16 address is 5405 Morehouse Drive, San Diego,
17 California 92121.

18 Q And what's your current position?

19 A I'm chairman of the company, Laffer
20 Assocaties.

21 Q Now, I show you a document marked BOMA
22 Exhibit 1.0, the direct testimony of Dr. B. Laffer,

1 Laffer Associates on behalf of the Building Owners
2 and Managers Association of Chicago.

3 Now, if I were to ask you the same
4 questions today that are contained in this document,
5 would your answers be the same?

6 A Yes, they would.

7 MR. GIORDANO: Move for the admission of BOMA
8 Exhibit 1.0.

9 JUDGE WALLACE: Any objection?

10 MR. RIPPIE: No.

11 JUDGE WALLACE: BOMA Exhibit 1.0 is admitted.

12 (Whereupon BOMA Exhibit 1.0
13 was admitted into evidence.)

14 MR. GIORDANO: Q. Now, I show you a document
15 entitled Rebuttal Testimony of Dr. Arthur B. Laffer,
16 Laffer Associates on behalf of the Building Owners
17 and Managers Association of Chicago, BOMA Exhibit
18 3.0.

19 Now, if I were to ask you the questions in this
20 document today, would your answers be the same?

21 A Yes, they would.

22 Q Also show you BOMA Exhibit 3.1. This is an

1 example of a descending clock pay-as-bid auction.
2 Was this prepared by you or under your supervision?

3 A Yes, it was.

4 MR. GIORDANO: Move for the admission of BOMA
5 Exhibits 3.0 and 3.1.

6 JUDGE WALLACE: Any objection?

7 MR. RIPPIE: No objection.

8 JUDGE WALLACE: Those two exhibits are
9 admitted.

10 (Whereupon BOMA Exhibits 3.0
11 and 3.1 were admitted into
12 evidence.)

13 MR. GIORDANO: I tender the witness for
14 cross-examination.

15 JUDGE WALLACE: Does anyone have cross of
16 Dr. Laffer?

17 MR. RIPPIE: I do, Your Honor. I've spoken
18 with both Mr. Rabin Robert and wih Mr. Goldenberg,
19 who I think have indicated that they're not going to
20 cross.

21 So while I normally would ask to go last, I
22 guess I would be first and last perhaps other than

1 Mr. Reichart. So with your permission.

2 JUDGE WALLACE: All right. Why don't you pull
3 that mike over a little.

4 MR. RIPPPIE: Sure.

5 JUDGE WALLACE: Thank you.

6 CROSS-EXAMINATION

7 BY MR. RIPPPIE:

8 Q Good morning, Dr. Laffer. How are you?

9 A Good morning, Mr. Rippie. Fine, thank you.

10 Q We've already been introduced, but I'll
11 repeat it again. I'm Glenn Rippie and I'm here
12 representing Commonwealth Edison today.

13 I'm going to ask you a number of
14 questions. I promise that they will be simple. And
15 if you will bear with me, I promise no Laffer curve
16 balls.

17 Could you define social welfare for me,
18 please?

19 A I guess social welfare is the total value
20 of all goods and services for the society.

21 Q And would you agree as an economist that
22 social welfare is generally maximized by competitive

1 market outcomes?

2 A It generally is. Not always, but
3 sometimes.

4 Q Would you agree with me that your testimony
5 in this case suggests that at least for wholesale
6 electric procurement, a competitive market outcome
7 is something that you recommend?

8 A Oh, I do, yes, in this case.

9 Q And amongst the benefits of that
10 competitive market outcome, would you agree that
11 customers are better off?

12 A They should be better off in this case,
13 yes.

14 Q I want to you put aside for a moment
15 questions that we'll get to about the details of how
16 best to achieve that optimal competitive market
17 outcome.

18 Would you agree with me that in the case of
19 a firm purchasing a good or a service from multiple
20 suppliers who is striving to get those goods or
21 services at the lowest price, competitive
22 procurement is an effective approach?

1 A It surely is an effective approach, yes,
2 that's true.

3 Q And in particular you are recommending a
4 competitive-procurement approach in the case of
5 obtaining electric power wholesale?

6 A That's correct.

7 Q Now, Dr. Laffer, is it your testimony that
8 a pay-as-bid descending-clock auction is under all
9 circumstances and for all markets the best mechanism
10 for a buyer to obtain any product or service at the
11 lowest price?

12 A I don't know about all circumstances and
13 all markets, but in this one it is, yes.

14 Q So the answer to my question is, no, there
15 might be a market or a circumstance where it --

16 A Well, I don't know the circumstances where
17 it wouldn't be the best, but that's true. Could
18 very well be the case.

19 Q And in order to make that judgment of
20 whether or not the market was one that worked or
21 didn't work for pay-as-bid auction, you would want
22 to know something about the market that I was asking

1 you about. Right?

2 A You'd want to know some of the general
3 characteristics of the market, yes, you would.

4 Q Okay. Now, it is correct that the specific
5 recommendation in this case is intended to operate
6 in the wholesale electric market. Right?

7 A That's correct.

8 Q And in what wholesale electric market does
9 ComEd operate?

10 A Well, the Illinois market is where ComEd
11 basically operates.

12 Q What entity operates the markets in which
13 customers buy and sell power that ComEd would use to
14 supply its retail load?

15 A Well, ComEd is the person that does the
16 supplying, the entity that does the supplying. And
17 they get their electricity from numerous sources.

18 Q Who operates the market, though?

19 A I don't understand the specific question.

20 Q Okay. Are you familiar with an entity
21 called PJM?

22 A Yes, I do know PJM. Not very well, but I

1 do know it, yes.

2 Q Are you aware that PJM operates a number of
3 markets in electric and gas --

4 A Yes, I do.

5 Q And ComEd is within the PJM territory?

6 A I believe it is, yes.

7 Q Now, it is true, is it not, that you have
8 never acted as the designer for the sale of electric
9 procurement auction?

10 A That's correct.

11 Q And is it also true that you have never
12 acted as the auction manager for a wholesale
13 electric procurement auction?

14 A That also is true.

15 Q Would you also agree with me that you've
16 never acted as the auction monitor or an adviser to
17 a regulatory body evaluating the outcome of a
18 competitive electric procurement auction?

19 A I believe that's true too.

20 Q Would you also agree with me that you have
21 never given testimony before a court or a
22 legislature prior to today making a recommendation

1 concerning an electric wholesale procurement
2 auction?

3 A I believe that's correct as well.

4 Q And finally, is it true that you have never
5 before today opined on the prudence or
6 appropriateness of any particular type of
7 competitive electric procurement auction?

8 A I don't know that that's true. I mean,
9 opined on it to myself. But as a student we went
10 through Marcel Vato's Board on Electricity de
11 France, but I've never done anything official on
12 that.

13 Q Since you were in college and studying case
14 studies of other economists, you've never done any
15 professional work on the subject?

16 A No, I have not.

17 Q Okay. Fair enough.

18 Now, would you consider yourself an expert
19 on the behavior and market rules -- I'm sorry. Let
20 me break that into two questions.

21 Would you consider yourself an expert on
22 the market rules applicable to the PJM wholesale

1 electric markets in which ComEd operates?

2 A In general I understand the markets that
3 they operate. The specific rules of PJM, probably
4 not, no.

5 Q So if I asked you how PJM clears generator
6 bids in the day-ahead market, you couldn't tell me?

7 A No, I probably could not tell you in any
8 detail.

9 Q If I asked you how they clear generator
10 bids in the real-time market, you couldn't tell me?

11 A Probably not on that either.

12 Q Do you know what an ancillary service is?

13 A Not for sure, no, in this case.

14 Q Do you know what products a generator
15 resident in the PJM market can sell on the day-ahead
16 market?

17 A Not specifically, no.

18 Q Do you know what products a generator
19 resident in the PMJ market area can sell in the
20 real-time market?

21 A No. Not specifically, no.

22 Q Do you know what steps a generator resident

1 in the PJM market area has to go through in order to
2 sell power and energy long-term on a bilateral basis
3 to load located distant from its physical location?

4 A No. I don't know that in any specific
5 detail, no.

6 Q Do you know what the load, peak load was in
7 PJM last year?

8 A No, I don't know what the peak load was
9 last year.

10 Q Ballpark?

11 A No. I don't know what it was. I mean, I
12 know what has been reported in California a couple
13 of times, but --

14 Q Do you know what the ComEd's peak load was
15 last year?

16 A No, I don't.

17 Q Do I have a sense roughly of what the --
18 even though you don't know the numbers -- of the
19 relationship between those two? Do you know if
20 ComEd is a tenth of PJM, half of PJM, a fifth of
21 PJM?

22 A No, I don't.

1 Q Okay. What is -- can you briefly describe
2 for me the various components that a winning bidder
3 in the CPP-D auction needs to be able to provide to
4 Commonwealth Edison?

5 A Well, I know in general what they have to
6 provide, but not specifically, no.

7 Q Would you agree with me that they need to
8 provide energy?

9 A Yes.

10 Q Capacity?

11 A Yes.

12 Q Ancillary services?

13 A Probably.

14 Q And when the CPP-B auction is a
15 full-requirements auction, is it your understanding
16 that that means that they need to supply those
17 components in whatever quantity that's sufficient to
18 meet the demand of the tranche that they --

19 A That's my understanding is they have to do
20 that, yes. It's a variable supply auction, yes.

21 Q Do you have an understanding of what the
22 components are that a winning bidder in the CPP-H

1 auction would have to provide?

2 A I'm not specifically sure which is which
3 mbut the one is a one year, there's a three year,
4 there's a five year.

5 Q This is the hourly.

6 A The hourly one. Not specifically what
7 their requirements are, no.

8 Q Do you know whether the bidders in the
9 CPP-H auction have to provide energy?

10 MR. GIORDANO: Objection, relevance. CPP-H
11 auction is beyond the scope of Dr. Laffer's
12 testimony. He testified about the CPP-A and the
13 CPP-B auctions.

14 MR. RIPPIE: A number of witnesses in this case
15 have talked in great detail about the relationship
16 between those and the necessity of having consistent
17 auction rules.

18 I'm asking very simple background
19 questions. If he doesn't know what the products are
20 because he thinks they're not relevant, he can tell
21 me that.

22 MR. GIORDANO: I don't think the hourly CPP-H

1 auction is relevant, as I said, because we're
2 talking about the structure of the CPP-A and CPP-B
3 auctions. Those are the year, three-year,
4 five-year, and then one-year contract auctions as
5 opposed to the hourly.

6 JUDGE WALLACE: All right. Objection's
7 overruled.

8 THE WITNESS: I would assume it has to do with
9 energy, yes.

10 MR. RIPPIE: Q. Okay. I want you to imagine
11 for a minute --

12 (Whereupon there was then
13 had an off-the-record
14 discussion.)

15 JUDGE WALLACE: Back on the record.

16 MR. RIPPIE: Q. I want to back up a minute to
17 the CPP-H auction just and ask you the question that
18 was prompted by Giordano's objection.

19 Is there a particular reason why you think
20 it was unnecessary to analyze the CPP-H auction in
21 the course of making a recommendation regarding the
22 other auctions?

1 A Not specifically except the auction
2 structure is what I've looked at and the proposal by
3 ComEd. And I focused on that from the standpoint of
4 economics, not the specific details of this market.

5 Q But you did not make a recommendation
6 concerning the CPP-H auction. Is that correct?

7 A Is that the hourly auction?

8 Q That is the hourly, right.

9 A That's correct. I didn't look at that.

10 Q Now, if I am a potential bidder in one the
11 other auctions, the annual auctions, I might own
12 generation. Is that right?

13 A You might.

14 Q I might also have rights to generation
15 either under a contract that is enforced or under
16 some sort of an option arrangement. Right?

17 A I believe so, yes.

18 Q And I might be a purely financial
19 participant that has no current rates to generation
20 at all, and I'm in essence going to assemble a
21 portfolio either physically or financially after the
22 fact.

1 A You could be all of those or any one of
2 them.

3 Q Or any one of them.

4 Now, am I correct that a seller, no matter
5 which of those categories she is in, has
6 alternatives to sell power to PJM besides the --

7 A I would assume they have lots of
8 alternatives, but that would be one of them
9 possibly, yes.

10 Q Would you agree with me that one of the
11 alternatives is a spot-market sale?

12 A Could possibly be, yes.

13 Q Would you agree that another alternative
14 would be selling bilaterally using the PJM
15 transmission system?

16 A I believe that would be a possibility as
17 well.

18 Q They may also sell -- would you agree that
19 they can also sell outside of PJM --

20 A Yeah. There are enormous numbers of
21 alternatives available to people selling in this
22 market. The marginal rates of substitution here can

1 be quite large.

2 Q Fair enough.

3 Are you aware of any jurisdiction presently
4 in the United States where a descending clock
5 pay-as-bid auction is used by a utility or
6 municipality to procure the requirements to meet its
7 full requirements retail load?

8 A No.

9 Q Are you aware of any jurisdiction using a
10 descending-clock auction that considered using the
11 pay-as-bid approach?

12 A I would imagine in some form or another a
13 number of these have considered it, but I don't
14 specifically.

15 Q Let me see if I can try to refresh your
16 recollection and maybe I can't.

17 Are you aware that this proposal was
18 considered in New Jersey?

19 A I believe it was.

20 Q Do you know what the results of the
21 consideration in New Jersey was?

22 A I believe they've gone to a uniform-price

1 auction.

2 Q Do you know whether the New Jersey Board of
3 Public Utilities specifically rejected the pay-as-
4 bid approach?

5 A I think that it's very possible they did
6 reject it seeing they went to a uniform price.

7 Q But you have no knowledge of why they would
8 have done that?

9 A Not specifically, no. It doesn't make any
10 sense to me why they would have done that, frankly.

11 Q Is it your intention that the
12 pay-as-bid-descending-clock-auction concept included
13 in your testimony be sufficiently detailed that if
14 the Commission should agree with you, it could be
15 adopted?

16 A Of course.

17 Q Now, if you recall, we asked for all of
18 your work papers. Do you recall that data request?

19 A Yes.

20 Q And do you have just generally in your mind
21 what the response to that data request was?

22 A I don't think I provided many work papers

1 'cause I don't think I have many work papers.

2 Q So you have not prepared, for example, an
3 auction manual?

4 A No, I have not prepared an auction manual.

5 Q And you didn't submit auction rules
6 analogous for those rules that were submitted for
7 the uniform-price auction. Right?

8 A No. I have not done that either.

9 Q So if we wanted to do an analysis of the
10 performance of a pay-as-bid auction at the same
11 level of detail as was done with the uniform-price
12 auction including an examination of auction rules
13 and manuals, that would not be possible. Right?

14 A Of course that's possible. I mean, you
15 could do that very easily. You have all the
16 resources available to do that. If you chose the
17 correct conceptual timer, you could provide that
18 manual and those rules very easily, sir.

19 Q Let me ask the question a little
20 differently.

21 If we wanted to do an analysis based on
22 your rules and manuals, we couldn't do that.

1 Correct?

2 A No. I did not prepare rules and manuals.
3 I'm not Com Edison.

4 Q Okay. Have you reviewed Dr. LaCasse's
5 manual?

6 A I don't believe I reviewed it in detail,
7 no.

8 Q Have you reviewed her auction rules?

9 A I've reviewed her testimony.

10 Q But not the rules attached thereto?

11 A Not specifically, no.

12 Q Have you made a proposal concerning the
13 conduct of an auction in the Ameren service
14 territories?

15 A In the what? Excuse me?

16 Q In the Ameren service territories.

17 A I don't believe so, no.

18 Q Are you aware of other auction proposal
19 works?

20 A No.

21 Q Would you agree with me that most of the
22 participants, be they generation owners or nonowners

1 in the auction for ComEd load are likely to be --
2 I'm going to use a lay term -- sophisticated?

3 A Yes. I would believe they would be quite
4 sophisticated, most of them. I mean, I would
5 anticipate that.

6 Q Sorry. I didn't mean to run over you.

7 A You didn't.

8 Q Okay. And you would expect the
9 sophisticated seller to, amongst other things, have
10 intelligence and models by which it would try to
11 estimate what its competitor's offer prices and
12 costs are. Right?

13 A To a greater or lesser extent, yes. I
14 mean, depends on the competitor. But some of them
15 would; some of them wouldn't.

16 Q I want you to bear with me in the next
17 series of questions because I'm going to venture
18 into the woods --

19 A Okay.

20 Q -- and ask you some questions just so I
21 make sure I understand how the proposal you're
22 making would operate.

1 As I understand it -- just tell me whether
2 I've got it or don't.

3 After the auction manager determines that
4 there is the same number of bids as there are
5 tranches, you are suggesting that the price continue
6 to tick down nonetheless in the hope that some
7 bidders will bid lower?

8 A Well, not necessarily in the hope, just
9 allowing them the opportunity to bid lower if they
10 would like to. I don't see why not.

11 Q But I've got it. Right? The summary
12 description is accurate?

13 A I think that's correct, yes.

14 Q Now, if the bidders knew that the
15 requirements were filled at the time that they were
16 filled, they would have no incentive to tick that.
17 Right?

18 A That's correct.

19 Q Now I'm going to venture even farther in
20 the woods and give you a hypothetical.

21 For the sake of clarity, I want you to
22 assume there's a hundred tranches being auctioned

1 and we'll just say that the price is 30. I'm making
2 those numbers up for the sake of illustration.

3 So if the auction ticks down from 30 to 29,
4 the theory would be that a bidder with a cost below
5 30 might elect to tick down to 29 if they thought it
6 could improve their probability of winning. Right?

7 A That's correct.

8 Q When they tick down to 29, though, they're
9 reducing their price? Yes?

10 A They're reducing their price and supposedly
11 their volume as well, but they would be reducing
12 their price 'cause that was the assumption.

13 Q You answered my next question.

14 So the decision as to whether or not to
15 tick down for them would be a balancing of the
16 chance that they would get business by ticking down
17 versus their cost in terms of a potential lower
18 volume and a lower price?

19 A You would expect that would be the reasons
20 for that, yes.

21 Q And if their model suggests that they've
22 won already or are likely to have won already, they

1 have little or no incentive to tick back?

2 A That's not true. It depends on the
3 probability of that model being correct. And
4 there's a wholesale distribution around that. And
5 frankly, if they decided not to go down, they risk
6 losing the business.

7 Q Okay. I understand that. Apparently I did
8 a bad job asking the question.

9 They do a balancing between the probability
10 of losing the business and their costs?

11 A They try to do an expected profit or
12 expected rate of return in their bidding just like
13 everyone else does, yes.

14 Q Okay. Now, you would agree that their
15 modeling might be off in that direction?

16 A Sure.

17 Q They could underestimate the clearing price
18 and they could overestimate the clearing price?

19 A That's correct. But that hopefully would
20 be in the model as well with the dispersion
21 parameter. It would be around that.

22 Q Now, in my example a bidder with a cost of

1 30 or above won't tick down regardless. Right?

2 A It doesn't make sense for someone with a
3 cost of 30 to bid 29 for selling it. And they might
4 still do it, I mean, but that's their choice.

5 Q Fair enough.

6 A rational bidder with a cost of 30
7 wouldn't tick down to 29?

8 A You would expect that to be the case.

9 Q And regardless of a bidder's costs, you
10 would agree that they're not going to tick down to a
11 number lower than they could sell the power
12 somewhere else?

13 A Well, that would be their alternative.
14 That would be -- their effective opportunity cost of
15 selling it elsewhere, that is right in the
16 definition of cost.

17 Q So once again you got the next question
18 too.

19 When in your testimony it says opportunity
20 costs, that's what we mean?

21 A That's what I mean, the opportunity cost of
22 selling it elsewhere.

1 Q And those places that they could sell
2 elsewhere include all of those opportunities that we
3 discussed about 15 minutes ago. Right?

4 A It would include that plus probably a lot
5 more.

6 Q Now, at the very beginning of my testimony
7 I asked you if you recall -- to define social
8 welfare. Do you remember that question?

9 A Yes.

10 Q And I had to smile because you didn't talk
11 to me about Medicaid or AFUDC or the women and
12 infants and children's program.

13 Is that because terms like social welfare
14 have different meanings in different contexts?

15 A They sure do.

16 Q And is this case you gave me a technical
17 economist's answer to what the meaning of social
18 welfare was?

19 A That's my profession.

20 Q Prior to your attention in this case, have
21 you ever had any opportunity to review the Illinois
22 Public Utilities Act?

1 A No, I have not.

2 Q Are you familiar with it now?

3 A Not terribly, no.

4 Q But am I correct that -- well, let me not
5 ask the question that way.

6 Is it or is it not your intention to offer
7 an opinion to this Commission as to what the word
8 futures as it appeared in the Illinois Public
9 Utilities Act means?

10 A No.

11 MR. GIORDANO: Objection. Calls for a legal
12 conclusion.

13 MR. RIPPIE: No, it doesn't. I'm just asking
14 him what the intention of his testimony is. I
15 didn't ask him to read the statute to me.

16 JUDGE WALLACE: Overruled.

17 THE WITNESS: My intention is to talk about a
18 futures contract in terms of economics and how that
19 term is used in economics, not in terms of the
20 document that you referred to.

21 MR. RIPPIE: Q. Are you familiar with the
22 concept of market value in Illinois retail

1 regulation?

2 A I'm not sure how it's used in that term. I
3 know what market value is, of course.

4 Q Are you familiar with the term market value
5 index as it's been used in Illinois retail
6 regulations?

7 A No. Again, I know what that is, but I
8 don't know it in that context.

9 Q Would you agree in general that if I wanted
10 as an economist to determine the value of a thing,
11 the best way to determine the value of that thing is
12 to ascertain what a willing buyer and a willing
13 seller neither operating under coercion would
14 exchange the product for?

15 A The value of the thing is the marginal
16 rate of substitution between a product and whatever
17 it is you're using as the numerare.

18 In this case a market transaction would be
19 a perfect way of doing that, of deciding what on the
20 market would be exchanged this for that. If you're
21 using dollar terms, that would be a dollar index.
22 If you're using terms of real index, pricing goods

1 and services, generalized consumption bundle.

2 Q So to simplify that answer just a bit, if
3 you wanted to know what the dollar value of a thing
4 is, a good way to determine that would be to find
5 what buyers and sellers are selling it for and
6 buying it for in an open market?

7 A That would make sense. It depends on the
8 location, the time, and all those others. But that
9 makes perfect sense to me.

10 MR. RIPPIE: Thanks very much. And I'm early.
11 That's all I have. Thank you.

12 JUDGE WALLACE: Mr. Reichart?

13 MR. REICHART: Thank you.

14 CROSS-EXAMINATION

15 BY MR. REICHART:

16 Q Good morning, Dr. Laffer. My name is John
17 Reichart. I represent the Staff. We met earlier
18 this morning.

19 A Yes, we did. Good morning.

20 Q Speak to you again.

21 Mr. Rippie exhausted a number of lines of
22 questions I had, so I just have one question I'd

1 like to follow up on Mr. Rippie's preliminary
2 inquiry concerning your experience.

3 And just for clarification purposes, I'd
4 like to ask you, is it correct that you have never
5 designed an auction for any regulatory agency or
6 regulated utility?

7 A I don't believe I have, no.

8 MR. REICHART: That's all I have. Thank you.

9 JUDGE WALLACE: Mr. Goldenberg, did you have
10 any questions?

11 MR. GOLDENBERG: No, sir.

12 JUDGE WALLACE: All right. Any redirect?

13 MR. GIORDANO: Yes, sir, Your Honor. Thank
14 you.

15 REDIRECT EXAMINATION

16 BY MR. GIORDANO:

17 Q Now, you testified that, Dr. Laffer, that
18 competitive procurement would be the best way to
19 procure electricity. Isn't that correct?

20 A I believe it would be an extremely good way
21 to do it.

22 Q Do you believe it's important in answering

1 that question the way that the competitive
2 procurement market is structured?

3 A Yes. That is important how the market's
4 structured.

5 Q And you don't believe, do you, that an
6 improperly structured competitive procurement
7 process should be adopted, do you?

8 A No, I don't.

9 Q And do you believe that the ComEd
10 descending-clock-uniform-price auction is properly
11 structured?

12 A Well, as far as it goes, it is, but it
13 doesn't go far enough to make it fully structured.
14 I mean, I don't -- frankly, I don't know why they
15 would stop it at a price and not let people bid a
16 lower price if they wanted to.

17 It just is to the benefit of the citizens
18 of Illinois if they could get lower-priced
19 electricity.

20 And all I would suggest here is they just
21 keep that descending clock going and allow people to
22 bid any price they want to and if the prices come in

1 lower, then they can accept those prices.

2 It's just common sense. It's what I do
3 whenever I buy something. I -- what is it that
4 Shatner man does on the TV? He says, Compare
5 price. That's all I'm suggesting ComEd do is
6 compare and do the price and get the best deal you
7 can for the people of Illinois.

8 Q And you believe that that approach would
9 result in a lower price for Illinois customers?

10 A Oh, sure, it would. For sure. I mean, you
11 know, as far as ComEd goes, it's fine. But being
12 able to go on further down would just improve the
13 chances of Illinois getting better prices.

14 Q And you were asked a number of questions
15 related to your expertise on the PJM market?

16 A Yes.

17 Q Whether or not you're an auction manager
18 or -- and whether or not you've designed an auction
19 and so forth.

20 Do you believe that that experience is
21 relevant to your -- to your recommendation in this
22 proceeding?

1 A If I thought it were relevant, I wouldn't
2 have agreed to testify.

3 Q And why isn't it relevant?

4 A Because this is a general economic
5 phenomenon here and it's not a market-specific
6 phenomenon that has different rules and general
7 economics.

8 General economics clearly defines how you
9 would modify the ComEd proposal. It's just
10 straightforward. It's in every microeconomic
11 textbook.

12 Q And you also were asked if you reviewed the
13 ComEd auction rules. Why was that not necessary in
14 your forming your recommendation in this proceeding?

15 MR. RIPPIE: I've got to start objecting to the
16 leading questions. I'm not pretending that the same
17 answers aren't going to come out, but nonetheless --

18 MR. GIORDANO: I didn't believe it was leading.

19 JUDGE WALLACE: I didn't either. Go ahead.

20 THE WITNESS: Could you repeat it again for
21 me, please, so I can catch the lead? Just kidding.

22 JUDGE WALLACE: You've never testified before?

1 THE WITNESS: This is the first time, Your
2 Honor.

3 MR. GIORDANO: As you all know, I'm not that
4 subtle. If it was leading, you'd know it.

5 Q Why was your not reviewing the ComEd
6 auction rules not relevant to your recommendation in
7 this proceeding?

8 A Well, I know the structure of the ComEd
9 auction rules, and that structure is sufficient for
10 me to understand what they're doing.

11 I mean, what ComEd does is it sets a
12 high price and sees how many bidders come. And then
13 they share that information with all the bidders.
14 And then they lower the price.

15 And they see how many come in. And as they
16 descend on the price, the number of bidders or the
17 total tranches bid diminishes until they get to a
18 point where the supply exactly equals demand.

19 At that point ComEd stops. And they've
20 shared this information which guarantees what
21 Mr. Rippie says would be true. If everyone know the
22 supply is exactly equal to demand, who would bid

1 lower? No one.

2 And so that sharing of information I don't
3 believe helps the auction at all, Number One.

4 Number Two, by not sharing that information
5 and then allowing it to go on further down, there
6 may well be some suppliers who have lower marginal
7 costs or less opportunities in the PJM market or
8 whatever you suggested, Mr. Rippie, who would be
9 willing to supply electricity to Illinois at a lower
10 price.

11 I don't see how it's possibly in the best
12 interests of Illinois and the citizens of Illinois
13 not to accept those prices which are bid by bidders
14 in the process.

15 It just makes no sense why ComEd would want
16 to stop there or why they would want to share that
17 information with the other bidders. It's not
18 sensical. It just guarantees implicit collusion in
19 that marketplace.

20 Q Do you know the company that has the lowest
21 marginal cost in the ComEd service territory?

22 A Well, I'm not sure of it, but I believe it

1 would be Exelon Generation that would be very low
2 marginal cost of producing electricity. And it's
3 very important for them to fill their full
4 capacity.

5 Q And you believe that the consumers of
6 Illinois would get a lower price from Exelon
7 Generation under your structure than under ComEd's
8 proposed structure?

9 A I believe there's a very good probability
10 that they would not get a lower price. They surely
11 would not get a higher price.

12 And they would allow Exelon General to make
13 a bid of a lower price, I don't see how possibly
14 that could hurt the consumers of Illinois in just
15 allowing the bid.

16 What ComEd has done in its auction
17 description is it's prohibited people from bidding
18 lower prices. And that doesn't make any sense to
19 any economist I know.

20 Q Now, you also testified that your
21 approach -- you're not aware of your approach being
22 used in other states.

1 Are you aware of a pay-as-bid auction being
2 used in electricity markets anywhere else in the
3 world?

4 A Yes, I am.

5 Q And where is that?

6 A In the UK they have it. They moved from
7 the uniform-price rule to a pay-as-bid approach that
8 I'm suggesting or similar to it.

9 And they I believe are very satisfied with
10 it. The prices came down and they're continuing
11 with that market. They went from a uniform price to
12 a pay-as-bid along the lines I'm suggesting.

13 Q Are you proposing any other modifications
14 to ComEd's proposed auction other than continuing
15 the price decrease and not sharing the information
16 on the amount of excess supply with the bidders?

17 A Yeah. There's another modification that I
18 would be proposing that would go along with
19 information sharing.

20 The way ComEd's description is is that as
21 they get closer and closer to the place where the
22 supply exactly equals demand on the bid price there,

1 that they would stop sharing information with the
2 suppliers.

3 MR. RIPPPIE: Your Honor, this is way beyond the
4 scope of cross. The witness told me -- I did not
5 inquire into this area and the witness told me he
6 was not prepared to discuss auction --

7 MR. GIORDANO: I think it's relevant because
8 Mr. Rippie asked a question of his review of auction
9 rules.

10 And I think it's within the scope because
11 we're talking about what modifications to the
12 auction are that Dr. Laffer is recommending, the key
13 point being that there's only three modifications
14 that Dr. Laffer's recommending.

15 He's not recommending a wholesale
16 rejection. Sorry for the use of the word wholesale,
17 but rejection of the --

18 JUDGE WALLACE: Okay. Go ahead and answer the
19 question.

20 THE WITNESS: Yeah. As ComEd's proposal comes
21 down as the prices decline, when they get close to
22 the point where the supply equals the demand, they

1 get close to there they'll stop sharing the
2 information.

3 JUDGE WALLACE: And that's a modification --

4 THE WITNESS: Well, this is the way they have
5 it proposed right now. This is ComEd's proposal
6 right now is they drop the price in equal decrements
7 on down until they start getting close to where the
8 suppliers exactly equal the number of tranches they
9 need.

10 Then what they do at that point is they
11 stop sharing the information with the suppliers.
12 And what they then do is they allow the amount of
13 price decrement, the declining price to be a
14 function of the excess supply in the market
15 according to the bids they have already received.

16 That I would eliminate as well, sir. The
17 reason for that is when you start seeing the price
18 units dropping, everyone knows you're getting really
19 close to equilibrium where the quantity of supply
20 equals the quantity demanded. And that provides
21 information to the suppliers as to what their
22 competitors are doing.

1 In my view the information that is being
2 provided, proposed to be provided by ComEd does
3 nothing but allow implicit collusion amongst the
4 suppliers to know what everyone else is doing so
5 they can stop the bidding.

6 I mean, that's exactly what they're doing.
7 And then once they hit that point, they then
8 prohibit anyone from actually offering a lower
9 price, which, again, makes no sense to me whatsoever
10 except in the concept -- well, it does make sense in
11 the context of who's doing the auctioning and the
12 relationship they have with some of the suppliers.

13 But other than that, it makes no sense. If
14 you're trying to get the best deal for the people of
15 Illinois, it makes no sense to share information, to
16 provide decreasing decrements, or to not allow
17 people to bid lower prices.

18 You don't need to be an expert in the
19 specific market to understand that.

20 MR. GIORDANO: Q. You were asked some
21 questions by Mr. Rippie about suppliers having
22 models and using models in developing their bids.

1 Do you believe that the use of models would
2 result in a lower price under your approach or under
3 the ComEd approach?

4 A Under my approach there is no way you're
5 going to get a higher price and you probably will
6 get a lower price because you allow people -- if
7 they have a model that would predict that they would
8 get a larger share of the business or their share of
9 the business for a lower price, they would do it.

10 It's up to them. They are, as Mr. Rippie
11 said, sophisticated people in this marketplace.
12 They know what their costs are. And if they want to
13 bid lower, why should you not let them bid lower? I
14 just don't get it.

15 Q Now, you were asked some questions about
16 your testimony on the supplier forward contracts
17 coming out of the auction being futures contracts.

18 Why do you believe that those contracts are
19 not future contracts?

20 A Now, I wish to make sure that Mr. Rippie
21 understands that. I don't know the legal definition
22 here at all on that, but futures contracts in my

1 profession are contracts that are traded on
2 exchanges where you have a contract with a broker
3 not with an offsetting dealer where you have fixed
4 quantities at specific deliveries and they're traded
5 throughout time periods there.

6 This market doesn't come close to that.
7 you have variable quantities. You have it done once
8 a year, and it's with the buyer itself is a specific
9 contractor. That is not what an economist would
10 consider a futures contract. It just isn't.

11 MR. GIORDANO: I have no further questions,
12 Your Honor.

13 JUDGE WALLACE: Recross?

14 MR. RIPPIE: Sadly, a little.

15 RECROSS-EXAMINATION

16 BY MR. RIPPIE:

17 Q Just have a couple of questions on the
18 UK.

19 Your general testimony about pay-as-bid in
20 UK refers to NETA and BETA. Right?

21 A Yes.

22 Q NETA, New Electricity Trading Arrangement,

1 and British Electricity Trading Arrangement. Is
2 that correct?

3 A That's correct.

4 Q Okay. The majority of the volume traded on
5 the UK exchange is traded bilaterally. Right?

6 A That's correct.

7 Q And those auctions that we're talking about
8 are essentially for balancing energy?

9 A That's correct.

10 Q And they're run every how often?

11 A They're run very frequently, I believe.

12 Q Every half-hour?

13 A About.

14 Q So how many years would it take for ComEd
15 to run the auction as many as times as Britain runs
16 it in a day?

17 A Well, if we do half-hour, if they did it
18 24 hours a day, that would be 48 years.

19 Q In 2050. So by the time the same amount of
20 price information is shared as UK shares in a day,
21 it will be a long time?

22 A Yeah. I mean, this is part of the reason

1 why I said it's not a futures contract as well is
2 because it's just --

3 Q I just want you to --

4 A But no, that's correct. I mean, it's
5 got -- all these auctions all have different
6 specific characteristics. It doesn't change the
7 principles one iota.

8 Q I understand.

9 A Thank you.

10 Q By the time it's run as many times as
11 Britain runs it in a day, it will be decades.
12 Right? You would agree with that?

13 A Well, sure. That's clearly the number.

14 Q Now --

15 JUDGE WALLACE: I think I need that explained.

16 MR. RIPPIE: Sure.

17 Q Part of your point, Dr. Laffer -- I want
18 you to please listen to my question, okay -- is that
19 as the auction is run, suppliers get information and
20 part of that information is the bid prices, but part
21 of it is also where the auctions end up clearing.
22 Right?

1 A That's true, yes.

2 Q Okay. In Britain suppliers get information
3 about where the auction's bid and if a uniform-price
4 auction were run, how the prices approach the
5 clearing price every half-hour. Right?

6 A They would, yes.

7 Q So you could after, say, watching it five
8 hours, have ten pieces of information about your
9 co-competitor's costs and about their willingness to
10 decrease their bids?

11 A That's correct, yes, totally true.

12 Q Now, in order to get ten pieces of
13 information about that in the ComEd proposal, you
14 would have to watch ten operations of the auction,
15 which would take ten years?

16 A That's correct.

17 Q And in the course of ten years you would
18 expect there to be different generators. Right?

19 A Could be.

20 Q Different fuel costs?

21 A Could be.

22 Q Different transmission system patterns?

1 A That's all true. Ten years is a long time.

2 Q So you wouldn't particularly, if you were
3 advising the generator, say that they ought to base
4 their predictive models of what costs are and how
5 they should bid on ten-year-old generation cost
6 data, would you?

7 A Of course I would predicate it on a
8 ten-year-old cost data. Plus you built your models
9 based upon responses people have had historically.

10 Now, admittedly a half an hour is a lot
11 shorter than a year, but believe, me a year provides
12 information for people to guess what their
13 competitors are going to do.

14 And if ComEd decides to just give away that
15 information in the market, it will allow them to
16 change their bids in an implicit collusive fashion
17 to keep the price high.

18 Q It is -- to be clear, it is your testimony
19 that you believe bidders in this auction often model
20 their bidding behavior based on generation cost data
21 up to ten years old?

22 A Well, of course. I mean, they would have

1 different prices put in there, but their
2 elasticities, their costs, their technology, all of
3 that should be based upon historical numbers. I
4 don't know how to do it on any other way other than
5 historical numbers.

6 Q Let's talk for a minute about bidder
7 behavior.

8 Will you agree with me that how bidders
9 behave to prices ticking down are a function of the
10 rules that they're facing?

11 A Well, in part. I mean, but mostly -- I
12 don't know what you mean by the rules they're
13 facing. But of the auction rules, is that what you
14 mean or do you mean it's based on, primarily on
15 their supply costs, which --

16 Q Let me ask you a simpler question.

17 Is it your belief that bidders are going to
18 behave in the same way or differently in response to
19 a pay-as-bid auction as they do in response to a
20 uniform-price auction?

21 A Let me -- let's just as long as we get our
22 hypothetical here correctly specify --

1 Q It's not a hypothetical.

2 A Well, you say -- but I have to ask you
3 three other questions just to make sure I understand
4 your question correctly.

5 Q Let me ask the question.

6 A Are we still sharing information is what
7 I'd like to know. If you're still sharing
8 information, that will allow them to behave very
9 much the same way.

10 If you're not sharing information, which is
11 what my proposal would be --

12 Q Let me try the question again.

13 A Okay. Sorry. I don't mean to be obscure
14 on that.

15 Q No. No. And I want the question to be
16 clear too.

17 If I am a bidder facing pay-as-bid rules
18 like you recommend, is my behavior in bidding prices
19 into the auction going to be different than my
20 behavior would be if I'm facing the rules that ComEd
21 proposes or is it going to be the same?

22 A I believe that the bidding behavior would

1 be different under my proposal than under yours.

2 Q And Mr. Giordano asked you one or two
3 questions about other changes, and I'm just going to
4 very quickly make sure that there are not other
5 changes.

6 You're not recommending any change to the
7 price-decrement rules?

8 A Well, I am, of course. I just mentioned
9 that as you get closer to the equilibrium, what
10 ComEd has proposed is that the degrees to which the
11 prices fall are related directly to an excess
12 supply.

13 And that I am disagreeing with because I
14 think that provides collusive information to the
15 other suppliers. And it's inappropriate to do that
16 in the best interests of the consumers of Illinois.

17 If it went down in equal decrements, then
18 it would be a change.

19 Q So the answer is yes?

20 A Yes.

21 Q But you're not changing the decrement rules
22 at the beginning of the auction?

1 A As long as they're by equal amounts, that's
2 fine.

3 Q Not changing the eligibility rules?

4 A No, not going after eligibility either.

5 Q Not changing the rules for determining the
6 timing and phasing of the routes?

7 A No, no changing that either.

8 Q Not changing the switching rules?

9 A People are allowed to switch all they want
10 in my proposal.

11 Q Not changing the rules for determining exit
12 prices?

13 A You know, there is a way of allocating
14 that. I believe I had it as random because you have
15 discrete price changes. The exit rules would be
16 slight, but no, not really changing the exit rules
17 in any generic sense.

18 Q Or any specific sense?

19 A Nor any specific sense, Mr. Rippie.

20 MR. RIPPIE: Thanks. That's it.

21 THE WITNESS: Thank you.

22

1

2

CROSS-EXAMINATION

3

BY JUDGE WALLACE:

4

Q Dr. Laffer --

5

A Yes, sir.

6

Q - very briefly, why do you not want

7

information to be shared?

8

A Because the information --

9

I'm sorry. Excuse me.

10

Q How are bidders are going to react if they

11

don't have any information?

12

A Well, they do have a lot of information,

13

sir. It's just that they don't have the information

14

as to what their competitors are doing at this

15

moment.

16

They know their cost functions. They know

17

the marketplaces. They know the substitution with

18

the PJM markets. They know what the price is. They

19

know all of that. They know the rules.

20

They just don't know what everyone else is

21

bidding. And that informational, allowing them to

22

know what everyone else is bidding and at what

1 prices or what volume allows them to game-play the
2 system and effectively have an implicit collusion to
3 keep the price high.

4 It's like anything -- I guess it was the
5 DuPane Club dinners, which was the famous antitrust
6 in Pittsburgh where all the suppliers got together
7 and talked price.

8 That shouldn't be allowed in these markets,
9 sir, because it really allows these people to keep
10 the price higher than it otherwise would be. It's
11 just natural that they would do that.

12 And I'm not -- I mean, I understand being a
13 supplier and how you always want the highest price,
14 but that's not what's best for the people of
15 Illinois.

16 Q Your proposal has been called a sealed-bid
17 auction and you say it's not a sealed-bid auction?

18 A But there are very major differences
19 between this and a sealed bid. It has many
20 attributes of a sealed bid as well.

21 Q Why do you say it's not a sealed bid?

22 A Well, because they don't do a sealed bid

1 and they do it in many different price decrements.

2 Now, if in a sealed bid you put your whole
3 supply schedule, in other words, you went through a
4 hypothetical of what each price would be and what
5 you would supply to the market, it would be very
6 close to that if you put your whole supply schedule
7 in.

8 But it's just to make sure that these
9 people don't know what their competitors are doing
10 so they can't game-play the supplier. It's -- in
11 economics in price theory, it's a fully
12 discriminating monopsonist is what I am proposing
13 here.

14 Once you get the market price, you've got
15 the equilibrium clearance, which we all agree should
16 be done.

17 Q ComEd disagrees that they are monopsonist.
18 Easy for you to say.

19 A I don't know if they disagree with that or
20 not, but ComEd is the single buyer in this specific
21 market. And that's what sort of monopsonist means.

22 The strange thing about ComEd in this

1 market is they also are a sister corporation of one
2 the generators who's supplying this market and in
3 the auction selling to ComEd.

4 Exelon Generation and ComEd, of course, are
5 owned by Exelon Corporation together. So it would
6 be very surprising to me if ComEd did not have an
7 interest in seeing Exelon Generation do well because
8 it would help the other company.

9 Q You and Dr. LaCasse, a witness for ComEd,
10 disagreed on several of these?

11 A Yes, sir, we do.

12 Q Dr. LaCasse has specific experience running
13 the or with the New Jersey auction?

14 A Yes.

15 Q And you have no specific experience with an
16 auction?

17 A That's correct.

18 Q All right. In light of that, why do you
19 still insist that your method is better? Simply
20 because of the potential for collusion?

21 A Well, that's one of the things there, but
22 it's general economics, sir. This is a general

1 economic situation whereby I do not understand how
2 you can make it better for the people of Illinois
3 not to allow a supplier to offer a lower price.

4 Why you would say you cannot go below this
5 price makes no sense whatsoever to me or basic
6 economic textbooks. You should always allow them to
7 bid lower if they want to.

8 Q All right. When you said -- when they get
9 to that last tick, what's going to make a bidder,
10 using Mr. Rippie's numbers, go from 30 to 29?

11 A Well, the person may not know that the
12 market is cleared at that price, and that person may
13 in fact sit there and say, you know, I need to make
14 sure I have this market 'cause my cost is 25.

15 And if I didn't get a piece of this market,
16 I'd lose the profits of \$4.00 per tranche. So
17 therefore, I'm willing to take the risk of offering
18 a slightly lower price to guarantee that I have my
19 supplies in this market.

20 And that is exactly what happens when you
21 have a lot of suppliers with different marginal
22 costs, when yet nuclear power, for example, that has

1 a very low marginal cost.

2 And some of the other supply sources have
3 high marginal costs that the very low marginal cost
4 producers have a great incentive to make sure that
5 they're not knocked out of this market.

6 And so therefore, if they withdraw the bid
7 at 30 and in fact the market clears at 29, they've
8 lost that whole supply to the market at a very
9 substantial profit.

10 So they're going to make sure that they
11 don't lose out on this marketplace and they'll bid
12 lower. And the beneficiaries of that, sir, are the
13 people of Illinois with lower electricity prices.

14 Q Okay. And if you come down from 30 to 29,
15 how do lose volume?

16 A If they bid at 29, that's fine. But let's
17 say they withdraw their bid. Let's say at 30 they
18 say, We're not going to bid any more, and it comes
19 down to 29 and the auction filled and they've lost
20 the market.

21 And they then aren't supplying to that
22 market at 29 because they made a mistake and thought

1 the market was cleared at 30. They don't know what
2 the market clearing price is unless someone tells
3 them.

4 And if no one tells them, they will
5 continue to bid the price that they think is still
6 profitable for them.

7 Q So if their costs are 25, they will keep
8 going down?

9 A Yeah. They'll keep going down until they
10 balance off the risk and the return of going
11 further, of course.

12 Q Because they want the --

13 A They want the market. That's exactly
14 right. I mean, that's what you do in any type of
15 negotiation.

16 When you build a rec room in your house,
17 you go to people and ask them to bid and you use the
18 pay-as-bid approach. You don't market clear at the
19 highest person who says he'll build your rec room.

20 Q Unless it's your brother-in-law.

21 A Couldn't have said it better, exactly.

22 JUDGE WALLACE: Okay. Thank you, Dr. Laffer.

1 DR. LAFFER: Thank you very much, sir.

2 (Whereupon a short recess
3 was taken.)

4 JUDGE WALLACE: Back on the record.

5 Ms. Juracek is back on the stand.

6 And you are still under oath from
7 yesterday.

8 MS. JURACEK: Yes, sir.

9 JUDGE WALLACE: And Mr. Robertson.

10 MR. ROBERTSON: Thank you, Your Honor.

11 ARLENE JURACEK

12 recalled as a witness herein, having been previously
13 duly sworn by Judge Wallace, was examined and
14 testified as follows:

15 CROSS-EXAMINATION

16 BY MR. ROBERTSON:

17 Q Good morning, Ms. Juracek. My name is
18 Eric Robertson, and I represent the Illinois
19 Industrial Energy Consumers.

20 And I'd like you to turn to page 28 of your
21 surrebuttal testimony, look at lines 633 to --

22 JUDGE WALLACE: Mr. Robertson, pull one of

1 those mikes over.

2 MR. ROBERTSON: Q. 633 to 634.

3 A Yes, sir. I have that.

4 Q There you say the Commission could
5 investigate the procurement tariffs if appropriate
6 grounds existed to do so.

7 What is your opinion of the circumstances
8 that would constitute appropriate grounds for such
9 an investigation?

10 A It's hard for me to speculate on what all
11 those grounds might be. I think the point here
12 being that we are not suggesting that any of the
13 Commission's normal authority to open an
14 investigation is being precluded by our proposal.

15 However, we do need the regulatory
16 certainty of a lack of a posthoc prudence review in
17 order to move forward certainly at this point in
18 time.

19 Q Would you consider the Commission's
20 consideration at any point in time subsequent to
21 this case of whether or not it is appropriate to
22 continue with the auction process as proposed by

1 ComEd would constitute a posthoc prudence review?

2 A I would expect and I would -- and again,
3 I'm not a lawyer, as you know. But I would expect
4 that the Commission would argue in that case that
5 the Commission's review was not a retrospective
6 review, but a review of future procurements.

7 And that's certainly one direction we would
8 need to go and take a look at. Obviously I can't
9 speculate on what all the circumstances might be
10 that would cause the Commission to take a second
11 look.

12 But in general terms, the direction ought
13 to be to modify future procurement rather than undo
14 prior procurements.

15 Q Okay. One of those circumstances in which
16 the Commission might want to take a second look is,
17 as we heard earlier today, a circumstance such as
18 the one they found in Great Britain when they
19 decided to go change their auction process?

20 A If you could elaborate on the specific
21 circumstance.

22 Q I was only listening in the other room.

1 A Okay. All right.

2 Q I can't.

3 A Okay. I think one of the advantages of the
4 ComEd proposal is the fact that we have tranches of
5 one, three, and five years with the phase-in
6 tranches in the first procurement so that we will be
7 aging off of a number of these contracts over time.

8 And at any point in time after the first
9 procurement only 40 percent of the load would be up
10 for rebidding.

11 It would seem to me that we have an
12 opportunity here to still retain the sanctity, so to
13 speak, of the preexisting contracts while moving
14 forward on revising future procurements and
15 basically phasing in whatever it was that they
16 wanted to phase in.

17 MR. ROBERTSON: Unfortunately, I'm going to
18 move to strike the answer as nonresponsive because
19 the question was not what they did, but rather,
20 would it be appropriate for the Commission to
21 consider, would that be a circumstance under which
22 the Commission would consider modification.

1 And she's given me a description of the
2 ComEd proposal and how it differs from the auction
3 that they conduct in Great Britain.

4 JUDGE WALLACE: All right. That answer's
5 stricken.

6 MR. ROBERTSON: Q. Would you -- in your
7 rebuttal testimony, Exhibit 9.0 at 8, page 8, line
8 179, you discuss price volatility.

9 And you suggest that the auction offers a
10 means of controlling price volatility. Is that
11 correct?

12 A Yes.

13 Q Okay. And why in your opinion is it
14 important to control price volatility?

15 A We've heard from stakeholders representing
16 particularly smaller customers that price stability
17 and predictability is an important feature for these
18 customers.

19 And just based on our own observation, for
20 example, what happened in California when San
21 Diego's customers were exposed to monthly changes in
22 prices, it became apparent to us that price

1 stability was important.

2 And I believe that the consensus items out
3 of the post '06 program contain that particular
4 aspect.

5 Q And in fact, Staff also indicated that was
6 important for all customers, did they not, in their
7 report to the Commission, if you know?

8 A I don't recall the specific statement, but
9 it sounds like something that Staff might have said.

10 Q Now, as I understand your testimony, you
11 object to the formal proceedings for review of the
12 auction suggested by Mr. Collins in part because of
13 the burden, expense, and awkwardness of litigation.
14 Is that correct?

15 A Yes.

16 Q And is it correct that ComEd is permitted
17 to discover its legal expenses through its rates?

18 A Historically we've been able to recover
19 such expenses which have been determined prudent.
20 So the answer is yes.

21 Q And would I be safe in saying that relative
22 to the total expenditure for power and energy by

1 ComEd, the legal expense even in this case is a
2 very, very small fraction of that total power and
3 procurement expense?

4 A Yes.

5 Q And is it correct that there is nothing in
6 the Public Utilities Act which required ComEd to
7 seek the Commission's approval of a particular
8 method for acquiring power and energy based on your
9 understanding as a nonlawyer?

10 A Based on -- if I understand your question
11 correctly, based on my understanding of the act, it
12 did not mandate our seeking approval of the specific
13 proposal that we're making.

14 Q Is it -- now, as I understand the company's
15 proposal here, one of the primary, not the only, but
16 one of the primary reasons it seeks to have the
17 Commission's approval is to avoid what it has
18 characterized as after-the-fact prudence reviews of
19 its power and energy purchases. Is that correct?

20 A Yes.

21 Q And based on your understanding of the act,
22 is it -- is the Commission permitted to make

1 after-the-fact prudence reviews?

2 A I think when it comes to rates, there is a
3 need to determine justness, reasonableness, and
4 prudence. How that prudence is effected I think
5 varies depending on specific circumstances.

6 And it's not always a second bite at the
7 apple prudence review. I think that's always called
8 for.

9 Q Now, it's a fundamental fact that customers
10 will ultimately be required to pay for the power and
11 energy acquired by ComEd. Is that correct?

12 A Those customers taking the power and energy
13 service, yes.

14 Q And therefore, customers and regulators
15 have substantial interests in ensuring that whatever
16 mechanism is used to acquire power and energy is a
17 mechanism which continues to provide the lowest
18 available cost. Would you agree?

19 A Yes.

20 Q Now, did you participate in the informal
21 process initiated by the Commission on the post2006
22 issues?

1 A Yes, I did.

2 Q Is it correct or to the extent that you
3 know, are you aware that there were motions filed by
4 a certain consumer and customer representatives in
5 this proceeding objecting to testimony offered by
6 ComEd which discussed or characterized the post2006
7 process?

8 A I'm aware of those motions, yes.

9 Q Is it your understanding that those motions
10 suggested that an agreement had been violated
11 relating to the understanding that the parties had
12 on the, how the information obtained and discussed
13 in those proceedings was to be used in future
14 litigation?

15 A I understand that's the basis of their
16 motions.

17 Q Now, would you agree that those parties may
18 be less interested in participating in informal
19 proceedings on power-procurement issues going
20 forward as a result of their experience?

21 A I can't agree to that. I have no idea what
22 they're thinking.

1 Q Would you agree that it's a possibility?

2 A Yes.

3 Q Would you agree that one of the benefits of
4 a formal approach would be that there are procedural
5 rules on the use and disclosure of information that
6 would be available to protect the interests of the
7 parties to that proceeding?

8 A One could establish such rules, yes.

9 Q Now, are you aware that the Commission at
10 ComEd's request has taken 30 days or less in some
11 instances to review tariffs and allow the
12 implementation of same?

13 A Yes.

14 Q Specifically the market value index
15 tariffs?

16 A Yes.

17 Q And in -- were you aware that in some
18 instances those proceedings were referred to as
19 rocket dockets?

20 A I've heard that term used, yes.

21 Q And did ComEd consider those proceedings to
22 be irregular at the time they proposed them to the

1 best of your knowledge?

2 A I think we considered them to be unusual
3 but permissible.

4 Q Now, in theory wouldn't it be possible for
5 the Commission to initiate a forma; process that
6 would result in a review of the elements of the
7 auction and the continued need for the auction on a
8 schedule that would be substantially less than the
9 traditional 11-month schedule for full-blown rate
10 cases?

11 A I believe it could be done in less than 11
12 months, yes.

13 Q I think this is the last question.

14 A Okay.

15 Q At page 11 of your surrebuttal, lines 244
16 to 245, and particularly at line 244, the word task
17 at line 244, I have some difficulty understanding
18 what that was referring to.

19 And if you could tell me what task you were
20 referring to, I'd appreciate it.

21 A Basically the task of active portfolio
22 management by ComEd. Essentially asking ComEd to

1 create a full requirements load following portfolio
2 from component parts rather than this limitation
3 they're proposing.

4 Q Now, if -- I just want to make sure I
5 understand it.

6 The utility has the obligation to serve the
7 customer's load, but it has the discretion to
8 determine how to do that. Is that your point?

9 A My point is that we have chosen a
10 methodology that we believe is better than ComEd
11 doing this actively itself as I've just described.

12 MR. ROBERTSON: Okay. I have nothing further.
13 Thank you.

14 JUDGE WALLACE: Mr. Giordano.

15 MR. GIORDANO: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. GIORDANO:

18 Q Hi, Ms. Juracek.

19 A Good morning.

20 Q And thanks for agreeing to let Dr. Laffer
21 go ahead. Appreciate it.

22 Let me refer you to your surrebuttal

1 testimony, Exhibit 17, page 11, lines 266 to 269.

2 And you testified there that nothing in
3 Illinois ratemaking requires or even permits the
4 Illinois Commerce Commission to go back and review
5 again in hindsight purchases made by ComEd under the
6 auction-procurement process if that process is found
7 prudent and reasonable by the Commission.

8 A Correct.

9 Q Is that correct?

10 A Yes.

11 Q And you also testified yesterday that you
12 don't consider the three-day process proposed by
13 ComEd to be a prudency review. Correct?

14 A That's correct.

15 Q Now, if the auction process is followed
16 without regularities, is it your position that the
17 Commission cannot reject the auction results if the
18 Commission considers the price unreasonable or
19 unjust based on market conditions at the time of the
20 auction?

21 A Mr. Giordano, I don't understand your
22 question. You said if the auction proceeds without

1 regularities?

2 Q Well, let's ask it the way it was asked in
3 a data request.

4 A Okay.

5 Q Not mine, though. A fine data request by
6 one of the other parties here. I believe Morgan
7 Stanley.

8 Under Request Number MSCG 2.04(d), under
9 your proposal, could the ICC initiate a formal
10 investigation or proceeding regarding the auction or
11 otherwise reject a cleared auction price that is
12 below the auction starting price because the
13 clearing price is too high?

14 A The answer to that question would be, no.
15 We do not believe such a proceeding should be
16 opened.

17 Q But in Request -- this same -- well, let me
18 mark this as BOMA Cross Exhibit 2.

19 (Whereupon BOMA Cross
20 Exhibit 2 was marked
21 for identification.)

22 Q I show you what's been marked as BOMA

1 Cross Exhibit 2. This is Commonwealth Edison
2 Company response to MSCG Data Request 2.01 through
3 2.09.

4 Are you familiar with this document?

5 A This appears to be a true and correct
6 representation of a data-request response of the
7 company.

8 Q Now, I'd like to refer you to 2.04(d) that
9 says, Under your proposal -- well, it refers to (a)
10 as well. It says, Will these concerns -- and
11 they're referring to concerns that lead to the ICC's
12 formal action -- be limited to a postauction review
13 by the ICC of whether the approved process and rules
14 were followed and whether there were anomalies in
15 the bids or process that would call into question
16 the competitiveness of the auction and thus its
17 results.

18 And then the answer is, no. ComEd's
19 proposal does not limit the Commission's concerns to
20 a postauction review by the ICC of whether the
21 approved auction process and rules were followed and
22 whether there were anomalies in the bids or process

1 that would call into question the competitiveness of
2 the auction and thus its results. Correct?

3 A That's what the answer says.

4 Q Okay. So we agree, then, it's not limited
5 to a review of whether -- the Commission's authority
6 in the three-day process is not limited to review of
7 whether the approved auction process and rules were
8 followed. Correct?

9 That's what this answer says. Correct?

10 A No, that's not what this answer says.

11 MR. AUGSPURGER: I'd like to make an objection.
12 I think there was an additional portion of the
13 answer that was not read into the record.

14 I do have a full set of discovery requests
15 here. I think it's that Mr. Giordano should include
16 all the words of that particular response that the
17 company requests be entered into the record.

18 MR. GIORDANO: Well, I'm going to move for the
19 admission of this into the record. I think what
20 counsel's referring to is all I left out was, Please
21 see ComEd's response to MSCG Data Request 2.1.

22 MR. AUGPURGER: That's correct. And as I said,

1 there's a series of data requests that address this
2 issues generally and then certain aspects in
3 particular.

4 And they're Morgan Stanley Capital Group
5 Requests 2.01 through 2.09. I do have a full set
6 available, would like to be admitted at this time.

7 MR. GIORDANO: We have no objection to that.

8 MR. RIPPIE: I have no objection to any of
9 these data requests being admitted, any of these
10 data-request responses.

11 JUDGE WALLACE: Let's go off the record.

12 (Whereupon there was then had
13 an off-the-record discussion.)

14 (Whereupon J Aron/MSCG
15 Cross Exhibit 2 was marked
16 for identification.)

17 JUDGE WALLACE: We've marked as J Aron and MSCG
18 Cross Exhibit Number 2 a set of data responses I
19 believe 2.01 through 2.09.

20 They're offered by Mr. Augspurger and there
21 was no objection. So that exhibit is admitted.

22 (Whereupon J Aron/MSCG

1 Cross Exhibit 2 was
2 admitted into evidence.)

3 JUDGE WALLACE: Mr. Giordano, further cross?

4 MR. GIORDANO: Yes. Thank you, Your Honor.

5 Q So is it your position that the Commission
6 can review the price of the auction during its
7 three-day review of the auction results?

8 A Certainly the price of the auction will be
9 one of the pieces of information that the Commission
10 will have.

11 But as we responded to subpart F of MSCG
12 2.04, the question was, Under your proposal, will
13 the ICC have an internal benchmark of reasonableness
14 or what constitutes a cleared auction price that is
15 too high as part of its three-day postauction
16 review?

17 If so, how will this benchmark be derived
18 and will bidders know the benchmark? Explain your
19 answer.

20 And our answer is, no -- the answer is, no,
21 first of all, that they won't have an internal
22 benchmark. And ComEd has not proposing use the the

1 benchmark to discover the reasonableness of the
2 auction clearing price for a given product.

3 We appear, going back to 2.01, to basically
4 be concerned about circumstances where the
5 competitiveness of the auction is believed to have
6 been compromised.

7 But price alone absent the larger context
8 is insufficient grounds for rejection of an auction.

9 Q Okay. So let me give you a hypothetical.

10 The price of the auction comes in at \$70 a
11 megawatt hour and the indexes for similar contract
12 links are at 50. Could the Commission reject the
13 auction results if the auction rules and procedures
14 were followed?

15 A I don't know what indexes you're talking
16 about, nor have any indexes been proposed.

17 Q Okay. Well, let's -- we don't have to
18 limit it to an index.

19 Let's just say that the Commission is aware
20 of market information that would suggest that the
21 auction results resulted in a price that was too
22 high.

1 Would it be your position that the
2 Commission could agree to decide not to certify the
3 auction in that situation?

4 A Not on the basis of the price alone. It
5 would have to be on the basis of the circumstances
6 that led to the difference in price.

7 So that would be where, as we pointed out,
8 circumstances where the competitiveness of the
9 Illinois auction was believed to have been
10 compromised.

11 Q But could the Commission if the price, if
12 they believed it was too high based on their
13 evaluation of market conditions, could they open an
14 investigation rather than certify the auction at
15 that point to be able to determine why that
16 happened?

17 A I believe that price would be relied on as
18 evidence in support of a larger concern, that price
19 alone would not be the concern.

20 Q But you would agree that if it was a
21 situation where the price was way too high based on
22 market conditions that a conclusion could be made

1 then that the auction was not properly competitive.

2 Correct?

3 A I don't know what you mean by way too high
4 based on market conditions. There would have to be
5 a more in-depth analysis and some concern with the
6 competitiveness of the Illinois auction as it was
7 run.

8 Q But you are saying that price would be
9 evidence of a lack of competitiveness that could be
10 considered by the Commission?

11 A Price might be evidence of a competitive
12 market or a lack of a competitive market. A price
13 will be the price.

14 And to the extent it's different from what
15 others might have anticipated it to be, then we
16 would have to examine why it is that it's different.

17 Q Well, I believe that Mr. Rippie told the
18 Commission in oral argument on the Attorney
19 General's motion to dismiss that the Commission
20 would have authority to reject the auction based on
21 price.

22 Isn't that correct? Are you familiar with

1 that?

2 A I'm not familiar with that.

3 Q Okay. Now, let me refer you to page 17 --
4 I'm sorry. Your surrebuttal, page 14, lines 317 to
5 318.

6 And you testified there that the cost of
7 suppliers selling to ComEd at rates subject to
8 federal regulation are not subject to re-examination
9 by the ICC. Correct?

10 A That's correct.

11 Q Now, isn't it true that although the rates,
12 the cost of suppliers selling to ComEd is not
13 subject to regulation subject to ICC regulation, the
14 pass-through of these charges to consumers is
15 subject to regulation by the ICC. Correct?

16 A Let's be clear that the section of my
17 testimony you pointed me to talks to a different set
18 of costs than the costs you are now describing we
19 would be passing through to consumers.

20 But yes, the Commission has the authority
21 to review the pass-through of our costs.

22 Q Now, I'd like to -- I think the remaining

1 portion of the testimony will, the cross-examination
2 will relate to the issue of determination of market
3 value.

4 I'd like to -- just so that everybody --
5 this is so that everybody has this. I'd like to
6 mark as a BOMA cross exhibit Section 220 ILCS 5/16
7 112(a).

8 (Whereupon BOMA Cross
9 Exhibit 3 was marked
10 for identification.)

11 Q Ms. Juracek, are you familiar with this
12 BOMA Cross Exhibit 220 ILCS 5/16 112(a)?

13 A I'm familiar with 16 112(a,) yes.

14 Q And will you accept subject to check that
15 this is the language from 16 112(a)?

16 A It appears to be, correct.

17 Q Now, ComEd has proposed in this case that
18 the PPO be determined based on the auction price
19 rather than the market index that is currently
20 used. Isn't that correct?

21 A The current formulation of the market index
22 would be replaced by the auction results, yes,

1 that's correct.

2 Q Okay. Now, it's your position, is it not,
3 that when the Illinois legislature used the term
4 futures contract or contracts in Section 112(a) of
5 the '97 Customer Choice Law, it did not mean the
6 same kind of futures contract that the commodities
7 Futures Trading Commission or the Commodities
8 Exchange Act talks about. Correct?

9 And that's -- you can refer to page 29, 667
10 to 674 of your surrebuttal.

11 A You're correct in that we believe that the
12 law does not refer to those specific Commodity
13 Futures Trading Commission or the Commodity Exchange
14 Act products.

15 Q But specifically, you say it did not mean
16 the same kind of futures contracts that the
17 Commodity Futures Trading Commission or the
18 Commodities Exchange talks about?

19 A Yes.

20 Q Okay. Now, I'd like to refer you to
21 Exhibit 9, page 52, lines 1218 to 1220.

22 And isn't it also your position stated

1 there that ComEd's proposed supplier forward
2 contracts are forward contracts and that they
3 therefore clearly are a type of futures contracts
4 within commonly accepted definitions and
5 understanding of that? Isn't that your testimony?

6 A Yes.

7 Q Now, is it your position that a futures
8 contract is the same as a forward contract?

9 A Those terms are often used interchangeably.

10 Q Okay. Do you think they're correctly used
11 interchangeably?

12 A They're used as they're used. As I
13 testified --

14 Q It would be a mistake, wouldn't it, to
15 interchange those terms because they mean two
16 different things, don't they?

17 A No, not necessarily.

18 Q Okay. Well, let me show you what I'd like
19 to mark as BOMA Cross Exhibit -- first can I move
20 for the admission of BOMA Cross Exhibit 3.

21 MR. RIPPIE: I have no objection. I don't
22 think we need to admit the act, but I have no

1 objection to the exhibit.

2 JUDGE WALLACE: I'm not going to admit BOMA
3 Cross Exhibit 3.

4 MR. GIORDANO: That's fine, Your Honor.

5 (Whereupon BOMA Cross
6 Exhibit 4 was marked
7 for identification.)

8 MR. GIORDANO: Q. I show you what's been
9 marked as BOMA Cross Exhibit 4. And this is the
10 Chicago Board of Trade Proposed ComEd Hub
11 Electricity Futures Contract Terms.

12 Are you familiar with this document?

13 A No. I note, however, that it is dated
14 2001. And I'm not aware that any such product was
15 actually traded.

16 Q Regardless of whether it's traded or not,
17 the issue in this proceeding is whether or not the
18 suppliers forward contracts are futures contracts?

19 A No, I don't believe that's the issue.

20 Q Well --

21 A I believe that's the issue as you have
22 defined it. However, I don't believe the market

1 value index is restricted to futures contracts
2 however you choose to define them.

3 Q I understand that.

4 But there is a relevant issue, isn't there,
5 of whether the supplier forward contracts are
6 futures contracts?

7 A You've chosen to make that an issue.
8 There's certainly contracts applicable to the market
9 in which the utility sells and customers in its
10 service area buy.

11 MR. GIORDANO: Object and move to strike. It's
12 nonresponsive.

13 MR. RIPPIE: It's perfectly responsive. You
14 asked her whether it was an issue, and she explained
15 why it wasn't responsive. She's told you it was an
16 issue, and she told you what significance or lack
17 thereof it has.

18 JUDGE WALLACE: Overruled.

19 MR. GIORDANO: Q. Now, are you aware that a
20 ComEd hub electricity futures contract was approved
21 by the Chicago Board of Trade?

22 A No, I'm not.

1 Q Do you know whether futures contracts
2 traded on recognized futures markets or exchanges
3 are, like ComEd's supplier forward contracts,
4 directly between a buyer and a seller?

5 A Any contract involves two counterparties.
6 So I assume there's a buyer and a seller.

7 Q But in fact, don't you agree that, as
8 Dr. Laffer testified, in futures contracts traded on
9 recognized exchange or markets the buyers and
10 sellers don't enter into contracts with each other
11 but with the clearinghouse of the market or
12 exchange?

13 A Well, you didn't specify who the buyer or
14 who the seller would be. But the clearinghouse is
15 still -- in those types of instruments the
16 clearinghouse is still the transactor.

17 I'm not familiar enough to know whether
18 that clearinghouse is acting as an agent for a buyer
19 and a seller or whether it's actually the buyer and
20 the seller.

21 Q All right. Well, let me then refer you to
22 your other position on why the PPO-MVM compliance

1 with 16 112(a.)

2 It's your position, is it not, that the
3 supplier forward contracts are market traded because
4 the auction itself is a market. Correct?

5 A Yes.

6 Q And it's also your position that ComEd's
7 proposed auction would result in a published index
8 for electricity. Correct?

9 A Yes.

10 Q Now, you testify on page 53 that -- lines
11 1250 to 1251 that an index is commonly understood as
12 a number -- let me see.

13 I think this is on the direct.

14 A It's in my rebuttal.

15 Q I mean the rebuttal, right.

16 Commonly understood as a number derived
17 from a series of observations and used as an
18 observation or measure. Isn't that correct?

19 A Used as an indicator or measure.

20 Q As an indicator or a measure.

21 Now, in attempting to support this
22 testimony, you also testified on lines 1251 to 1254

1 that all of the numerous bids received from bidders
2 during the rounds of the auctions leading up to the
3 final round make up a series of observations.

4 Correct?

5 A Yes.

6 Q Now, do you agree that bids from earlier
7 rounds prior to the market-clearing price will not
8 have been accepted by ComEd?

9 Do you want me to rephrase?

10 A I'm not sure what you mean by not
11 accepted. I will assume that the market manager
12 will consider them -- or the auction manager will
13 have considered them legitimate bids and accepted
14 them.

15 Q Well, not accepted for purposes of the
16 contract with ComEd. The bids from the prior rounds
17 when the price was higher.

18 A They certainly don't represent clearing
19 prices.

20 Q And you agree that those earlier unaccepted
21 bids do not represent the price at which ComEd will
22 buy electricity or the price that bidders will

1 receive electricity from ComEd. Correct?

2 A To the extent they're not the clearing
3 price used at an auction, that's correct.

4 Q So then you would also agree that those
5 bids don't represent completed sales?

6 A Right.

7 Q So if we're looking for a series of
8 observations to be used to determine the market
9 price of electricity in ComEd's service territory,
10 don't you agree that these earlier unaccepted bids
11 of ComEd auctions are not indicators of market
12 value?

13 A I think you're confusing the idea of series
14 of observations as being the losing bids, so to
15 speak. There are a series of observations at the
16 clearing price.

17 And we will know -- if there are 28 bidders
18 in the auction, we will have 28 observations at the
19 clearing price in terms of the volumes that those
20 bidders are willing to pay or have us pay them for
21 their product.

22 Q But those would all be at the same price.

1 Correct?

2 A But they are a series of observations.

3 Q But they would all be at the same price.

4 Correct?

5 A Yes.

6 Q Okay. And hasn't ComEd used -- doesn't
7 ComEd currently use an index in calculation of its
8 Rider PPO Power Purchase Option?

9 A Yes. We call it an index.

10 Q Well, and don't you use either the ICE or
11 Platts Indexes?

12 A We use observations from ICE and Platts.
13 And that's I-C-E. We use observations from ICE and
14 Platts in order to calculate the market value.

15 Q And those indexes -- those indexes reflect
16 a number of different prices for forward contracts.
17 Correct?

18 They're a composite index of those, a
19 number of different prices. Correct?

20 A They represent reported bids and completed
21 trades for specific transactions. And we use them
22 as a second-best alternative to the kind of

1 clearing-price information we'll get out of the
2 auction.

3 Q But they are all at different prices.
4 Correct? That's my question. An index of different
5 prices of various transactions that then comes out
6 as an index?

7 A They -- there are numerous transactions
8 which are accumulated which do not necessarily all
9 have the same price.

10 MR. GIORDANO: I have nothing further, Your
11 Honor. Thank you.

12 JUDGE WALLACE: Redirect?

13 REDIRECT EXAMINATION

14 BY MR. RIPPIE:

15 Q Ms. Juracek, I'm going to take you way back
16 to the beginning of cross-examination. Do you
17 recall there was some cross-examination at the
18 beginning about the costs of various suppliers?

19 Can you explain to the Judge and the
20 Commission why it wouldn't be an advantageous
21 strategy for ComEd to simply set a low price and to
22 invite sellers to come in and sell power to ComEd at

1 that arbitrary price?

2 MS. SATTER: I'm going to object to that
3 question. I don't recall any cross-examination
4 about an arbitrary low price. I think that's
5 mischaracterization of the questioning and it's a
6 mischaracterization of whatever was listed on
7 cross-examination.

8 MR. RIPPIE: I think I'll solve it by asking
9 the question differently.

10 Q Why wouldn't it be a viable strategy for
11 ComEd to just make a guess at what it thinks the
12 lowest-cost supplier's price is and invite people to
13 come in and sell at that price?

14 A Assuming that we were going after a
15 full-requirements product with segments of various
16 contract length, we would have to engage in before
17 we set that price the exact same kind of analysis
18 that all the bidders are going to engage in and try
19 to recreate what we think those bidders' bidding
20 strategies would be in order to figure out what a
21 reasonable price to ask for would be.

22 You mentioned an arbitrarily low price, but

1 if you're going to do a transaction, it's got to be
2 a reasonable price.

3 Q My next question is, and what happens if
4 the price that ComEd names is below the price at
5 which sellers can expect to be able to sell the
6 product?

7 A They won't.

8 MS. SATTER: I'm going to object again. This
9 line of questioning is not tied to anything on the
10 cross-examination.

11 I don't believe this witness was asked
12 questions about Commonwealth Edison presenting a
13 price for the lowest price in the market for the
14 auction.

15 MR. RIPPPIE: There was a lengthy colloquies
16 about the costs and profits of Exgen and other
17 generators. There were length colloquies about at
18 what price auctions are going to clear.

19 It is a -- I'm absolutely entitled to ask
20 this witness what happens if we try to get a seller
21 to sell at a cost below market.

22 MS. SATTER: I don't think that anybody raised

1 a question about selling below market in the auction
2 proposal that Commonwealth Edison has presented.

3 And that's the question that is being asked
4 here. If the question is if Commonwealth Edison
5 were to have an opening price at an arbitrarily low
6 price, what will happen? That's a self-answering
7 question.

8 MR. RIPPIE: You -- at the very beginning of
9 cross-examination, the Attorney General's Office
10 asked whether ComEd will generate. She then
11 asked -- he then asked her about what happens as a
12 result of the failure.

13 You asked whether suppliers are willing to
14 set at or below market prices. You discussed the
15 different markets in which that price or whether
16 that product could be acquired.

17 There was a discussion about whether
18 there's a single numeric price and what the price is
19 that results from that process.

20 I'm entitled to ask her why in the world
21 any seller would sell below market and --

22 JUDGE WALLACE: Go ahead and answer the

1 question.

2 MR. GIORDANO: Q. What happens if ComEd's
3 proposed selling price is below the market price?

4 A No one will bid.

5 Q Does Exgen have any obligation to bid below
6 the market price?

7 A No.

8 Q Does Midwest Generation have any obligation
9 to bid below the market price?

10 A No.

11 Q Does any seller of which you are aware have
12 any objection to bid below the market price?

13 A No.

14 Q In your opinion and based on your
15 experience, will any market seller bid below a
16 market price?

17 A No.

18 Q Now, there was a discussion about whether
19 or not Rider CPP contained stated charges as opposed
20 to formulas. Do you have that line of
21 cross-examination in mind?

22 A Yes.

1 Q Is it unusual for this Commission in your
2 experience to approve rates that have definitive
3 formulas rather than stated charges?

4 A No, it's not unusual.

5 Q Mr. Feeley asked you a series of questions
6 about posthoc or retrospective prudence review.

7 In your view, what action would ComEd have
8 to take with respect to the supplier forward
9 contracts if its prospects of being able to recover
10 the costs thereof were subjected to an
11 after-the fact and retrospective prudence review?

12 A I think we would need to include very
13 explicitly some type of a regulatory output in the
14 contract, assuming we would need to procure power
15 under some form of a contract.

16 Q To be clear, can you just explain what a
17 regulatory out is?

18 A That if ComEd were not able to recover the
19 costs incurred from transacting under the contract,
20 that we would reserve the right to limit payments to
21 the supplier to what we could recover.

22 Q And in your view, is that in the customers'

1 best interests?

2 A No.

3 Q Why not?

4 A Suppliers will view that as a risk, as a
5 very important risk and will price a risk premium to
6 cover the eventuality that such a regulatory-out
7 clause would be triggered into its present product.

8 So they'll bid an insurance value into
9 their price.

10 Q Now, you may recall that Ms. Satter also
11 asked you some questions about ComEd's transfer of
12 nuclear power stations that it formerly owned. Do
13 you recall that examination?

14 A Yes.

15 Q Do you have an understanding under the act
16 of the risks that ComEd would face currently had it
17 not transferred those stations?

18 A Yes.

19 Q Can you explain to the Commission what the
20 economic consequences or the economic risks to ComEd
21 would have been had it not transferred those
22 stations?

1 A Certainly the risks of efficient operation
2 of those plants, continued operation of those plants
3 would have fallen entirely on ComEd.

4 The risk of cost recovery for the costs of
5 running those plants would have been an issue. I
6 think those are the two largest ones that I can
7 think of.

8 Q And to the extent that those plants had
9 costs found prudent, who would have borne those
10 costs?

11 A Our consumers. Our customers.

12 Q In the event that the costs of operating
13 those plants exceeded the market value by more than
14 10 percent, what would the consequences have been
15 for ComEd had it not transferred the plants?

16 A As I understand the act, the Commission
17 would have been free to disallow such costs.

18 Q If ComEd had not transferred the plants, do
19 you have an understanding of who would have been
20 responsible for decommissioning expenses after 2006?

21 A ComEd.

22 Q And ultimately who would have been borne

1 those decommissioning costs?

2 A Our customers.

3 Q At the time the nuclear plants were
4 transferred, did ComEd -- strike that question.

5 Mr. Stahl asked you a series of questions
6 very briefly about some selected sections of the
7 supplier forward contracts. Do you recall those
8 questions?

9 A Yes.

10 Q One of his series of questions concerned
11 indemnity language. Can you explain to the
12 Commission why that indemnity language is necessary
13 in the supplier forward contracts?

14 A In order to appropriately assign the costs
15 to the cost causers or the risk causers of what is
16 being indemnified against.

17 Q In the absence of that indemnity language,
18 if a supplier's failure to deliver power and energy
19 were to cause an event that triggered liability in
20 ComEd under 16 125, who would bear those costs?

21 A I'm sorry. Need the first part --

22 Q I'll break it up.

1 Assume that that indemnity language were
2 deleted.

3 A Yes.

4 Q And a supplier were to fail to perform
5 under the supplier forward contract and deliver the
6 generation output that it promised and as a result
7 an event would occur that subjected ComEd to
8 millions of dollars of liability under 16 125.

9 In the absence of that language, who would
10 bear that cost?

11 A I believe at some point ComEd and its
12 shareholders would bear that cost. To the extent
13 penalties were invoked, I'm not aware that
14 penalties are routinely passed through in rates.

15 Q Now, Mr. Stahl also asked you about
16 dispute-resolution language, did he not, disputed
17 bills and --

18 A Yes. Yes.

19 Q Can you explain for the Commission why it
20 is necessary to have bilateral-dispute-resolution
21 language in the supplier forward contract?

22 A Simply because there are payments blowing

1 in both directions, and it's simply to ensure that
2 both parties are protected in the event that one or
3 the other creates a billing dispute.

4 Q In the absence of
5 bidirectional-dispute-resolution language, if ComEd
6 were to dispute the metering of energy delivered by
7 a supplier or any other charge imposed by the
8 supplier on ComEd, would it have a mechanism to
9 suspend payment pending resolution of the dispute?

10 A I don't believe so.

11 MR. GIORDANO: Thank you very much. That's all
12 I have on redirect.

13 Your Honor, yesterday there was a citation
14 asked for. So I'm prepared to give you that as
15 well.

16 JUDGE WALLACE: All right.

17 MR. GIORDANO: Also, Your Honor, I think in
18 reviewing the notes, her testimony and exhibits were
19 never admitted even though they were numbered.

20 JUDGE WALLACE: I was just going to say
21 something about that.

22 If I remember correctly, you had

1 Exhibits 9.0 through 9.7 and Exhibits, ComEd
2 Exhibits 17. 0 through 17.3. And I can't recall if
3 there were any objections.

4 Were there?

5 MS. SATTER: Only the standing objection by the
6 Office of the Attorney General in Cook County
7 concerning post 2006.

8 JUDGE WALLACE: Right. Okay. Those exhibits
9 are admitted.

10 (Whereupon ComEd Exhibits 9.0
11 through 9.7 and 17.0 through 17.3
12 were admitted into evidence.)

13 JUDGE WALLACE: Ms. Satter, do you have
14 recross?

15 MS. SATTER: Yes.

16 JUDGE WALLACE: Please go ahead.

17 MS. SATTER: First as a preliminary matter I
18 believe that I did not ask the questions about
19 transfer of the plants. I'm assuming that somebody
20 else did.

21 But if not, then I would reserve the right
22 to move to strike once the transcript is available

1 because I did not ask those questions. Okay

2 RECROSS-EXAMINATION

3 BY MS. SATTER:

4 Q Ms. Juracek, you had some comments on
5 redirect about the market price at which sellers
6 would be willing to sell to Commonwealth Edison?

7 A Yes.

8 Q Now, would you agree with me that there is
9 currently a large market for electricity?

10 A Yes.

11 Q And one of those markets is the PJM market.
12 Is that correct?

13 A I would assume that when you speak of a
14 large market, we're generally talking about PJM as
15 it's applicable to ComEd.

16 Q Okay. So that's the PJM administered
17 market?

18 A A PJM administered market is certainly the
19 real-time and the day-ahead markets. But within the
20 PJM construct, there's a larger market of
21 transactions that are taking place.

22 Q And that larger market of transactions

1 includes many sellers and many buyers. Is that
2 correct?

3 A Yes.

4 Q And it includes some bilateral contracts.
5 Is that correct?

6 A Bilateral contracting is allowed in that
7 marketplace, yes.

8 Q And it includes various types of products,
9 doesn't it?

10 A Yes.

11 Q And those products vary by, for example,
12 duration or time frame?

13 A Yes.

14 Q And they also vary by type of service such
15 as baseload, peak or cycling service. Is that
16 correct?

17 A Those are three types of service. They're
18 not all-inclusive, however.

19 Q Okay. So you would agree that there are
20 other services as well that are traded on this
21 market?

22 A There are some other types of products

1 traded on the market which couldn't be the
2 full-requirements product that we're soliciting.

3 Q And that's one of many products?

4 A Yes.

5 Q And when we say traded, we mean a buy/sell
6 arrangement?

7 A Yes.

8 Q And would you also agree with me that there
9 are various indices of market price in connection
10 with the sale of electricity?

11 A There are a number of pricing points. So
12 I'll accept that as being a definition of index,
13 yes.

14 Q Okay. And you mentioned a few earlier such
15 as the intercontinental exchange and Platts. Those
16 are reporting agencies?

17 A Those are reporting platforms. They're not
18 indexes per se.

19 Q Okay. But they report market prices from
20 your point of view?

21 A Yes. They're among the sources of
22 market-price information.

1 Q And there's also a spot market. Is that
2 correct?

3 A Yes.

4 Q And then a day-ahead market?

5 A Yes.

6 Q So all of these set market prices. Is that
7 correct?

8 A All of these are indicators of market
9 prices for the particular products that they're
10 reporting on.

11 Q And they're not all the same number, are
12 they?

13 A No.

14 MS. SATTER: Okay. I have no further
15 questions.

16 MR. STAHL: Judge Wallace, I have just very
17 brief.

18 RE CROSS-EXAMINATION

19 BY MR. STAHL:

20 Q Ms. Juracek, on 16 125 question for a
21 minute, it is not the company's intent by this
22 provision in the SFC to gain more protection than

1 the General Assembly has given it in 16 125.

2 That's not your intent, is it?

3 A No.

4 Q You also understand, don't you, that if a
5 power interruption has been caused by the act of a
6 third party, the Commission is entitled to grant a
7 waiver of the requirements of 16 125?

8 A You know, as familiar as I am with the act,
9 I'm not real familiar with that one. So if you're
10 reading that out of the act, I'll accept that.

11 Q But in any event, it is clear that the
12 company's position is is that it is willing to be
13 bound by whatever 16 125 provides and is not asking
14 the Commission to approve a contractual provision
15 that would give the company more protection than 16
16 125. Is that correct?

17 A I think we're just trying to define our
18 protections as we understand them under 16 125.

19 Q Without broadening the protections provided
20 by 16 125. Correct?

21 A I will give a nonlegal opinion. The
22 lawyers may say otherwise, but I believe that our

1 business intent is to not unfavorably advantage
2 ourselves to your disadvantage or your client's
3 disadvantage.

4 Q And when you say unfairly, you mean in a
5 way that is not contemplated by the statute. Is
6 that what you mean by that?

7 A Yes.

8 MR. STAHL: All right. Thank you. I have
9 nothing further.

10 JUDGE WALLACE: Anyone else have any cross?
11 Mr. Feeley.

12 RE-CROSS-EXAMINATION

13 BY MR. FEELEY:

14 Q Ms. Juracek, Mr. Rippie asked you about
15 regulatory out language in the supplier forward
16 contracts?

17 A Yes.

18 Q And its ComEd's position that that is --
19 would only be necessary if there was a subsequent
20 prudence review of the contracts that resulted from
21 the auction process?

22 A If there were a form of prudence review

1 that potentially resulted in disallowance of the
2 cost recovery under the contracts, then we would
3 need to protect ourselves on the other end by
4 putting something in the contract.

5 Q Okay. But it's not ComEd's position that
6 regulatory out language is necessary in those
7 contracts if a review is done and it is determined
8 that ComEd either added up numbers wrong or it
9 included costs from accounts that should not have
10 been considered one coming up with charges for its
11 customers. Correct?

12 A That's correct.

13 MR. FEELEY: That's all I have.

14 JUDGE WALLACE: Anyone else? Mr. Augspurger.

15 RE CROSS-EXAMINATION

16 BY MR. AUGSPURGER:

17 Q Good morning, Ms. Juracek.

18 A Good morning.

19 Q Can you also envision a circumstance where
20 a proposed bidder would require a regulatory out in
21 order to participate in the auction were there to be
22 an extended Commission prudence review?

1 A Yes.

2 MR. AUGSPURGER: Thank you.

3 JUDGE WALLACE: Anyone else?

4 CROSS-EXAMINATION

5 BY JUDGE WALLACE:

6 Q Okay. Ms. Juracek, I don't quite
7 understand why you think ComEd has no buyer's
8 power.

9 A Would you like me to elaborate on that?

10 Q Yes, please.

11 A Essentially because ComEd represents only a
12 tiny portion of the marketplace. ComEd's load is on
13 the order of 15 percent of the PJM peak, for
14 example.

15 And any of the bidders in the marketplace
16 that would be bidding into the ComEd auction have
17 opportunities to bid into something like 135,000
18 megawatts worth of demand throughout the PJM
19 system.

20 And they're not simply restricted to PJM.
21 They could bid into the MISO companies. They could
22 bid into the Southwest Power Pole companies. They

1 could bid in really anywhere on the eastern
2 interconnection.

3 So earlier there was a little discourse
4 about monopsony, and that's why we believe we have
5 no monopsony power. No one is obligated to sell to
6 us.

7 Q And then you take exception to certain of
8 Mr. Efron's calculations.

9 Is it your testimony that rates would have
10 gone up anyway over the past ten years absent the
11 freeze, absent the restructuring act?

12 A No, that's not my testimony. My testimony
13 is that going forward rates will go up anyhow
14 regardless of the procurement methodology.

15 I can't say with any certainty what rates
16 would have done absent the freeze. You'd have to
17 make all kinds of assumptions on efficiency,
18 improvements, and everything else.

19 Q So you weren't talking about the last few
20 years, you're going forward?

21 A My concern was Mr. Efron's implications
22 about future impacts to consumers and his

1 characterization of them and needing to dispel the
2 notion that any price increases are solely the
3 product of the declining auction.

4 Q I think Mr. Feeley asked you this
5 yesterday, but on page 24 of your surrebuttal at
6 lines 547, you indicate that tariff revisions would
7 be fatal. And I'm not quite clear as to why these
8 would be fatal.

9 A Basically for the same reasons that I just
10 testified to on redirect and that the gentleman
11 representing Morgan Stanley alluded to.

12 If in fact there is retrospective prudence
13 review, then we need to be regulatory outs. The
14 company would want protection that it was not going
15 to be exposed to paying suppliers costs that it
16 could not recover.

17 And the suppliers would want some
18 protection that their revenues wouldn't be in
19 jeopardy.

20 So in order to provide that level of
21 certainty that will have a transaction that will
22 result in dollars flowing as the auction cleared,

1 there's going to be reluctance on parties to enter
2 into that transaction.

3 Q All right. Since we've never done this
4 before in Illinois, how sure are you of what the
5 bidders would want?

6 How do you know that a, you know, some of
7 these minor revisions wouldn't scare off bidders so
8 to speak?

9 A We've been engaged in discussions with a
10 wide variety of potential bidders, their
11 representatives, and other stakeholders.

12 We began with meetings I want to say in
13 December and had a very robust set of discussions
14 both in person and via e-mail.

15 We employed a very wide e-mail distribution
16 lists and entertained questions and provided answers
17 through those discussions. In addition, we've had
18 numerous one-on-one discussions with a variety of
19 bidders.

20 So what you see in the surrebuttal as a
21 supplier forward contractor really represents a huge
22 amount of work and a huge time commitment of

1 resources and personnel --

2 Q Okay. You're going to quite far afield.

3 How do you check that, though? I mean,
4 they could tell you anything. Right?

5 A Basically --

6 Q They're suppliers, right, so they're going
7 to tell you anything?

8 A Well, basically by soliciting feedback and
9 understanding what worked and didn't work.

10 We also have the advantage of being able to
11 review the dockets in Maryland and New Jersey in
12 talking with our counterparts at Public Service
13 Electric and Gas in New Jersey to ascertain, you
14 know, some of the push-pull.

15 There's been a very robust discussion. We
16 also incorporated our own wide variety of experts
17 within ComEd and Exelon with respect to financial
18 folks, treasury, accounting folks, our
19 risk-management folks.

20 Q Well, how can you still quantify what
21 difference it's going to make to the suppliers?
22 They've told you that they won't bid or there's

1 going to be a risk premium if, you know, there are
2 these revisions?

3 A We have not quantified it. However, you
4 need a willing bidder in order to participate. And
5 the bidders have told us that a regulatory out is
6 problematic. I've heard similar discussions.

7 Q But nonetheless, if you're not a
8 monopsonist, you still -- ComEd 15 percent is
9 something that bidders are going to bid on
10 regardless?

11 A I don't know that for a fact.

12 Q Okay. Two more questions.

13 Do you think that these SFCs should be
14 traded?

15 A I have no opinion as to whether they should
16 be traded. I think nothing prevents them from being
17 traded in the secondary market, although I would
18 want to be sure that any such trade still resulted
19 in the delivery of service that we're expecting out
20 of these contracts.

21 These aren't simply financial contracts in
22 their purest sense. But there's nothing that would

1 prevent some creative market designers from creating
2 some type of secondary instruments around them.

3 Q And you know, ComEd and Ameren had several
4 discussions towards coordinating the procurement
5 proposals.

6 And in your testimony you mention that
7 Ameren is going to purchase ancillary services and
8 under your proposal the supplier must purchase
9 ancillary services.

10 Do you know of the difference or what's the
11 distinction? Why is ComEd wanting the supplier to
12 do it rather than purchasing it?

13 A First of all, we've modeled this on the New
14 Jersey agreement in which my understanding is the
15 suppliers are responsible for all power, energy,
16 ancillary services, and transmission.

17 So we started with that framework. And
18 basically Ameren and ComEd are faced with the rules,
19 ComEd in PJM and Ameren in MISO.

20 And my understanding is that the MISO rules
21 are sufficiently different where Ameren felt that
22 they needed to be procuring the ancillaries whereas

1 ComEd does not need to.

2 Through PJM's experience with the New
3 Jersey auction, they've actually established a
4 procedure by which we can assign the various
5 ancillaries through something called the declaration
6 of authority.

7 And we've included that declaration in
8 Appendix C clearly delineates which services the
9 suppliers are responsible for and which ComEd is.
10 So we're able to do it because of PJM's experience
11 with New Jersey, essentially.

12 Q Since the Commission is being asked in this
13 docket and 05-0160 to essentially set more what
14 comes out to be a state-wide practice and
15 procurement, is this a problem that Ameren's
16 purchasing ancillary services and ComEd is requiring
17 the supplier to provide them?

18 A I don't view it as a problem. It means the
19 Ameren product is a tad different from the ComEd
20 product.

21 But in my experience, the suppliers are
22 going to be sophisticated enough to build those

1 differences into their models.

2 JUDGE WALLACE: Okay. Thank you, Ms. Juracek.
3 You may step down.

4 (Witness excused.)

5 JUDGE WALLACE: Next witness?

6 MR. ROGERS: I'm John Rogers representing
7 Commonwealth Edison Company.

8 WILLIAM McNEIL

9 called as a witness herein, having been duly sworn
10 by Judge Wallace, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. ROGERS:

14 Q Mr. McNeil, would you state your name and
15 address, please.

16 A William P. McNeil, 440 South LaSalle,
17 Chicago, Illinois.

18 Q And I've shown you what have been marked as
19 ComEd Exhibits 3 through 3.5, 10 through 10.5, and
20 18 through 18.1.

21 Are these exhibits your direct, rebuttal,
22 and surrebuttal testimony with exhibits for

1 submission in this proceeding?

2 A Yes, they are.

3 Q If I were to ask you the questions that are
4 included in Exhibits 3, 10, and 18, would your
5 answers be the same as set forth in those exhibits?

6 A They would be.

7 Q Are there any additions or corrections that
8 you wish to make in any of these exhibits?

9 A No.

10 MR. ROGERS: I would offer into evidence ComEd
11 Exhibits 3 through 3.5, 10 through 10.5, and 18
12 through 18.1.

13 MR. LAKSHMANAN: Your Honor, may I have a
14 clarification.

15 Is 10, is that revised?

16 MR. ROGERS: Yes, it is. With respect to
17 revisions 10 through 10.2 were corrected and they
18 were e-Docket Number 61244.

19 JUDGE WALLACE: All right. On 18 we have 18
20 and 18.1?

21 MR. ROGERS: Yes, Your Honor.

22 JUDGE WALLACE: What is 18.1?

1 MR. ROGERS: Q. Could you please describe that
2 exhibit.

3 A 18.1 is a series of Powerpoint slides from
4 a previous docket that I testified in.

5 JUDGE WALLACE: All right. What's 10.1?

6 MR. ROGERS: Exhibit 10 is Mr. McNeil's
7 rebuttal testimony.

8 JUDGE WALLACE: Right.

9 10.1?

10 THE WITNESS: 10.1 is the suggested content of
11 the confidential Staff report following the auction.

12 JUDGE WALLACE: 10.2?

13 THE WITNESS: Is the content for the auction
14 manager report.

15 JUDGE WALLACE: 10.3.?

16 THE WITNESS: Is the report prepared by synapse
17 on wholesale power class of the PJM.

18 JUDGE WALLACE: 10.4.?

19 THE WITNESS: Is a press release on economic
20 growth through competitive energy markets.

21 JUDGE WALLACE: And 10.5?

22 THE WITNESS: Is a comparison of Ameren and

1 ComEd's supplier forward contracts.

2 JUDGE WALLACE: Okay. Thank you. I'm sorry.

3 I didn't have those. Okay.

4 Are there any objections to those

5 exhibits?

6 Hearing none, Commonwealth Edison

7 Exhibits 3.0, 3.1, 3.2, 3.3, 3.4, 3.5, 10.0

8 Revised, 10.1 Revised, 10.2 Revised, 10.3, 10.4,

9 10.5, 18.0, and 18.1 are all admitted into the
10 record.

11 (Whereupon Commonwealth Edison

12 Exhibits 3.0, 3.1, 3.2, 3.3, 3.4,

13 3.5, 10.0 Revised, 10.1 Revised,

14 10.2 Revised, 10.3, 10.4, 10.5,

15 18.0, and 18.1 were admitted into

16 evidence.)

17 JUDGE WALLACE: Mr. McNeil, several people want

18 to cross-examine you.

19 And does anyone want to go first?

20 Mr. Lakshmanan.

21 MR. LAKSHMANAN: Sure.

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CROSS-EXAMINATION

BY MR. LAKSHMANAN:

Q Till morning. Good morning, Mr. McNeil.
I'm Joe Lakshmanan on behalf of Dynegy.

A Morning.

Q I'd like to direct you to your surrebuttal
testimony, and in particular page 26. Once you're
there, I have some lines.

A Okay.

Q In particular, lines 569 through 570 and
581 through 583.

A Okay.

Q Now, as I understand those lines, both of
them refer to certain classes of customers. Is that
correct?

A That's correct.

Q And they refer to the same sets of
customers in both instances. Is that correct?

A Yes.

Q With regard to those sets of customers in
this series of questions, am I correct that these

1 two provisions that are on those very sets of lines
2 when taken together mean that those customers would
3 be automatically assigned to CPP-A service?

4 A If they make no affirmative election during
5 the window, they would be automatically assigned.

6 Q Okay. Thank you.

7 They could then subsequently leave that
8 service anytime during the annual period on seven
9 days' notice. Is that correct?

10 A That's correct.

11 Q Under ComEd's proposal prior to
12 surrebuttal, are you familiar with that?

13 A Yes.

14 Q Did these same customers have to opt in to
15 the CPP-A group within a specified window in order
16 to receive CPP-A service?

17 A The customer groups were different in the
18 proposal prior to surrebuttal. The CPP-A proposal
19 prior to surrebuttal only applied to customers
20 greater than 1 megawatt other than those whose
21 service was declared competitive.

22 Generally the 1 to 3 megawatt customer

1 group. In the surrebuttal, the customers now
2 eligible for CPP-A include customers over 400
3 kilowatts.

4 Q Thank you.

5 To the extent that the 1 to 3 megawatt
6 customers were included in the prior CPP-A, am I
7 correct that they would have had to have opted in
8 within a certain specified window under ComEd's
9 prior proposal?

10 A That's correct.

11 Q Thank you.

12 Was that window 30 days?

13 A Yes.

14 Q And was that 30 day period viewed by ComEd
15 and others as an option?

16 A Yes.

17 Q And so did the new proposal also be viewed
18 as an option with respect to the customers listed on
19 lines 569 through 70 and 581 through 83?

20 A The option is different. Instead of an
21 option to take the price, it's the default. The
22 option applies to the other choices that the

1 customer has.

2 Q Well, they would have 365-day option to
3 decide not to take the service similar to the 30-day
4 option not to take the service in ComEd's prior
5 proposal for a certain set of customers. Is that
6 correct?

7 A Correct, for the customers that meet these
8 criteria.

9 Q And turning to lines 842 to 843 of your
10 surrebuttal --

11 A Yes.

12 Q -- would you agree that the option value
13 increases with the length of time it is available
14 for the buyer to exercise?

15 A Yes.

16 Q And then continuing on lines 843 to 845,
17 you also agree that a longer window will add to the
18 price customers will pay because suppliers will
19 raise their prices?

20 A Yes.

21 Q So for example, an option held open for 75
22 days will cost more than an option held open for 30

1 days?

2 A I agree with that.

3 Q And an option held open for 365 days will
4 cost more than one held open for, say, 35 days or
5 75 days?

6 A Yes.

7 MR. LAKSHMANAN: I have no further questions.

8 JUDGE WALLACE: Mr. Stahl.

9 MR. STAHL: Yeah. I also have some very brief
10 cross. Maybe we can get it out of the way.

11 CROSS-EXAMINATION

12 BY MR. STAHL:

13 Q Once again, David Stahl, Midwest Gen.
14 Morning, Mr. McNeil. Mr. McNeil, I don't have
15 copies of this. We probably don't need it.

16 But the company responded to a Midwest Gen
17 data request. Let me read you the request and the
18 answer and see if you can talk about this.

19 This is Midwest Gen 1.10, question, Does
20 the company anticipate that it will be a net payor
21 or net payee under the CPP-B contract? Please
22 explain the basis for this answer.

1 Response, The company anticipates that it
2 will be a net payor under the CPP-B B contract and
3 you're identified as the person who can testify to
4 appropriate in the scope of cross-examination which
5 I will be asking you.

6 Are you familiar with this response?

7 A Yes.

8 Q All right. And you were sitting behind the
9 bar when Ms. Juracek this morning testified about
10 the desirability of this withholding provision
11 because it would be bilateral, that money was going
12 to be flowing back and forth and therefore the
13 withholding would be for the protection of both
14 parties. Do you recall that?

15 A Yes.

16 Q When you answered this data-request
17 response, did you in fact calculate the relative
18 order of magnitude of the amounts of money that
19 would be flowing to the company compared to the
20 amounts of money that might be flowing to the
21 supplier under the SFC contracts?

22 A No.

1 Q No.

2 You just knew without doing any calculation
3 that the company would be the net payor under the
4 contracts?

5 A That was our expectation.

6 Q What kind of flows of funds will go from
7 the supplier to the company under the SFC
8 contracts? Do you know?

9 A From the --

10 Q From the supplier. What is the supplier
11 going to be paying the company under the SFC
12 contracts?

13 A The supplier would be paying, for example,
14 amounts due under the market credit. If there's a
15 margin called for credit collateral, that's one
16 example that could be in the form of cash to the
17 company.

18 Also there are some fees that are covering
19 the cost of running the auction that are included in
20 the contract that may be fees that come from
21 suppliers to the companies.

22 Q Have you calculated roughly what the amount

1 of those fees might be per supplier?

2 A The -- in the latter example the fees are
3 estimated to be 500,000 per tranche for the CPP-B
4 products and 70,000 per tranche for the CPP-H
5 products.

6 Q And the market-to-market payments that you
7 refer to, those will only be made under certain
8 circumstances, will they not?

9 A That's correct.

10 Q On the other hand, the company will be
11 expected to pay the supplier for, what, the
12 supplier's collectively 20,000 megawatts of capacity
13 or energy?

14 A Roughly, yes.

15 Q And if you were to take 20,000 megawatts
16 times 8,760 hours in a year, calculate the number of
17 megawatt hours for which the company might be
18 financially responsible to the suppliers times even
19 a, just say a \$30 per megawatt hour price, that
20 would be roughly in the \$6 billion range, would it
21 not?

22 A You'd have to make an adjustment for the

1 load factor. I think it's more in the 3- to
2 \$4 billion range.

3 Q Okay. But in the event --

4 A Yeah.

5 Q Under these SFCs, the company will
6 collectively be paying suppliers somewhere between 3
7 to \$4 billion as a reasonable anticipation?

8 A Correct.

9 MR. LAKSHMANAN: All right. Thank you. I have
10 nothing further.

11 JUDGE WALLACE: Anyone else?

12 (Whereupon there was
13 then had an off-the-record
14 discussion.)

15 CROSS-EXAMINATION

16 BY MR. GIORDANO:

17 Q Good morning, Mr. McNeil.

18 A Good morning.

19 Q Now, let me refer you to your direct
20 page 5, lines 93 to 94. And you state there, don't
21 you, that prior to your current assignment as
22 director of regulatory strategy for ComEd, you were

1 director of energy acquisition. Correct?

2 A That's correct.

3 Q And you also testified in that position
4 part of your responsibilities were taking price
5 information from Platts Energy Trader and the
6 intercontinental exchange for purposes of
7 establishing market value pricing under Rider
8 PPO-MI. Correct?

9 A Correct.

10 Q It says, PPO-MVI there, but I think you
11 meant PPO-MI. Is that correct?

12 A I thought it was MVI. I'm not sure, but
13 it's Rider PPO.

14 Q PPO-MVI isn't that the new proposal and
15 PPO-MI is the current PPO?

16 I'm sorry. PPO-MVM is the new one. Okay.
17 Well, it is what it is.

18 Are Platts Energy Trader and the
19 intercontinental exchange market indexes of
20 electricity prices?

21 A No. The intercontinental exchange is an
22 electronic trading platform where buyers and sellers

1 can transact and they report their data both on
2 daily bid as well as transactions.

3 Platts Energy Trader is a survey, brokered
4 a survey of market participants and they report the
5 aggregate trade data that they collect.

6 Q And in your view, is ComEd's current
7 reliance on market data from Platts Energy Trader
8 and the intercontinental exchange a reasonable way
9 to set PPO pricing?

10 A Given the available data that we have
11 today, I think that the company believes that's the
12 best data available today.

13 Q Has there been any change in the Platts or
14 intercontinental exchange data that makes these
15 market data sources unreliable or unreasonable as a
16 market index for electricity prices?

17 A Well, they're not full requirements.
18 They're products that we then have to apply a lot
19 administrative formula to to try to create a proxy
20 for the full-requirements product that is the PPO
21 product.

22 So they're less desirable than if we had

1 reliable data on full requirements. But given what
2 we have today, they're the best data sources.

3 Q But there's been no change in that data
4 that makes it worse than it is currently. Correct?

5 A Not that I'm aware of.

6 Q And it's your position if you refer to
7 ComEd Exhibit 3.0, page 16, lines 364 to 65 that
8 ComEd's auction process will result in the execution
9 of market-traded contracts for delivery of power and
10 energy. Correct?

11 A Correct.

12 Q And the market-traded contracts that you
13 refer to are the supplier forward contracts that
14 ComEd and winning bidders would enter into.
15 Correct?

16 A Correct.

17 Q Now, let me refer you to Section 15.3 of
18 the CPP-B supplier forward contract which is
19 Exhibit 3.1 in your direct testimony.

20 A Which part?

21 Q Section 15.3.

22 Now, doesn't this section restrict

1 assignments of the supplier forward contracts by,
2 among other things, requiring ComEd's consent and
3 satisfaction of credit requirements in the supplier
4 forward contract?

5 A Correct.

6 Q Now, how can the supplier forward contracts
7 be traded on the market if it can't be traded
8 without ComEd's approval?

9 A That wasn't what I meant by traded in the
10 prior respect. I meant that it's a contract for --
11 that is traded -- it's a contract that the suppliers
12 sell under and ComEd buys under.

13 Q So it can't be further traded after that is
14 entered into by ComEd and the supplier without
15 ComEd's approval. Isn't that correct?

16 A Yes.

17 Q Okay. Now, you have proposed, haven't you,
18 that the CPP-A auction, which would now be the only
19 product available to customers between 400 kilowatt
20 and 3 megawatt, that there be a 30-day sign-up
21 window each year where customers could elect to go
22 onto that service. Correct?

1 A Customers who are not on bundled service
2 can opt into that CPP-A based product during the
3 30-day sign-up window. Customers that aren't on
4 bundled service and do nothing would default to that
5 service.

6 Q But if they're on competitive supply or the
7 PPO, they would have 30 days each year to sign up
8 for that service, otherwise, they couldn't sign up
9 for that service for another year. Isn't that
10 correct under your proposal?

11 A That's correct. That's correct.

12 Q Now, I'd like to refer you to Section 16
13 103(a) of the act where it states that an electric
14 utility shall continue offering to retail customers
15 each tariff service that is offered as a distinct
16 and identifiable service on the effective date of
17 this amendatory act of 1997 until the service is
18 declared competitive pursuant to Section 16 113 or
19 abandoned pursuant to Section 8508. Correct?

20 I mean, that's what it says there. Are you
21 familiar with that?

22 A I'm generally familiar.

1 Q Let me show it to you.

2 Do you want a copy of that, Your Honor?

3 JUDGE WALLACE: No.

4 MR. GIORDANO: Okay.

5 Q Do you believe that this section -- well,
6 let me first ask you.

7 The customers below 3 megawatts that would
8 be eligible for the CPB auction, customers in those
9 classes have not yet been declared competitive. Is
10 that correct?

11 A That's correct. Service for those
12 customers has not been declared competitive.

13 Q And it also has not been abandoned pursuant
14 to Section 8508. Correct?

15 A Correct.

16 Q And currently customers in those classes
17 can sign up for bundled service anytime throughout
18 the year, correct, ComEd bundled service?

19 A Yes.

20 Q But under your new proposal, customers in
21 those classes would only be able to sign up for
22 bundled service? They would only have a 30-day

1 window when they could sign up for bundled service.

2 Correct?

3 A Correct. If they were coming off as you
4 mentioned in your exam the PPO --

5 Q So although I understand -- I think we
6 understand your argument that customers would
7 continue to offer customers each tariff service
8 because you would still be providing them a type of
9 bundled service, it's true, is it not, that that
10 service would not be available for them through the
11 entire year, the sign-up capability for that
12 service?

13 A Under our proposal, the ability of
14 customers that were taking other options to return
15 to the bundled, to the bundled service outside the
16 window would not be there.

17 Q And those customers that you just referred
18 to would fall in the definition of retail customers,
19 wouldn't they?

20 A Yes.

21 Q Now, it's your position -- well, let me --
22 under the current PPO service, customers have a

1 75-day sign-up window. Correct?

2 A Correct.

3 Q And it's your position that 30 days is
4 sufficient time for customers to make their
5 decisions about supply options. Correct?

6 A We're balancing trying to give customers
7 time to make their decisions with trying to keep the
8 risks that we're putting into the product as small
9 as possible. So in balancing those two, we came to
10 30 days.

11 Q Have you ever assisted a customer in trying
12 to make a decision regarding the complicated ComEd
13 tariffs and complicated contracts from competitive
14 suppliers on a supply decision?

15 A I haven't assisted them on evaluating other
16 competitors. I've certainly assisted them with
17 complicated proposals that the company's made in the
18 past.

19 Q And these tariffs are all going to be new
20 now. Right? Correct?

21 A Correct.

22 Q And -- but you think 30 days is a

1 sufficient time for a customer to evaluate those
2 tariffs, evaluate its supply options, evaluate its
3 contracts, and then make a decision on whether it
4 goes on the new ComEd bundled service or enters into
5 a contract with a competitive supplier. Is that
6 correct?

7 A In combination with the additional
8 provisions that we put in where customers who want
9 to take the bundled service and have been on the
10 bundled service don't have to elect it and they can
11 change their mind within the following period,
12 that's the reason that we put those in there was to
13 make this as easy for customers as possible.

14 Q And you have not yet reconsidered this
15 30-day window even though the 75 days, it's the one
16 issue that the suppliers and the consumers are
17 unified on, that it should be 75 days, not 30? You
18 have not reconsidered that position?

19 A Correct. We considered that alternative in
20 preparing our surrebuttal and decided to stay with
21 our proposal at 30 days.

22 Q But if the Commission orders you to have a

1 75-day window, would you implement your tariffs with
2 the 75-day window?

3 A Yes.

4 Q Now let me refer you to your surrebuttal
5 again, page 18, lines 387 to 390 where it states
6 that if input prices -- and these are input prices
7 for fuel costs you're referring to, I believe --
8 rise by a large percent and the auction price rises
9 by less than that, we should consider that a
10 favorable result as competition in the auction keep
11 input price inflation from fully affecting the
12 auction price. Isn't that right?

13 A That's correct.

14 Q So would you also agree then that if input
15 prices rise by a certain percent and auction prices
16 rise by more than that, this would be an unfavorable
17 result?

18 A I think in general I would agree with that.

19 Q Would you also agree that if the auction
20 price is higher than forward market prices for power
21 of the same contract lengths at the time of the
22 auction, that this would also be an unfavorable

1 result?

2 A You would have to make sure that you're
3 comparing equivalent characteristics, risks,
4 supply. I mean, if you're comparing the same types
5 of risks, that would be unfavorable.

6 Q Let me refer you to page 19 of your
7 surrebuttal, line 409 to 410. Here you state that
8 the actual auction clearing prices in this auction
9 for the three-year-fixed-price products only
10 increased 18.6 percent for PSENG?

11 So by the word only, is it your -- it's
12 your testimony that that's a small increase, 18.6
13 percent?

14 A No. That is in the context of the
15 observation that I made at 400 and 401 that the New
16 Jersey Board reported that gas prices were up
17 25 percent in the last year and that oil prices are
18 up 30 percent.

19 And it was in comparison to those input
20 price changes that I made the statement only.

21 Q But it's you would agree that not in
22 context, but to consumers that's a large increase,

1 18.6 percent. Correct?

2 A Well, these prices didn't flow through to
3 consumers because of the combination of the
4 laddering of the contracts as well as the statute.

5 This is on the commodity only, not -- these
6 are not build impacts. These are auction clearing
7 price impacts. So those did not -- the -- that
8 commodity was purchased under these rates.

9 But then it gets blended with commodity
10 that was bought in prior auctions that was lower
11 price. So for, like, PSEG the rate impact on
12 ultimate consumers was 2.8 percent at the same time
13 period.

14 Q But the auction rate price impact for the
15 auction for that particular year was 18.6 percent.
16 Correct?

17 A From the products that were procured in
18 that year.

19 Q Okay. And isn't it true that fuel prices
20 are only one of the inputs involved in the cost of
21 producing electricity?

22 A Yes.

1 Q And isn't it true that fuel prices make up
2 a very small portion of the costs of producing
3 electricity from nuclear plants?

4 A I don't know. I think that's right.

5 Q So there's not a direct correlation, then,
6 between the increase in costs of fuel with increases
7 in costs of electricity. Correct?

8 A Correct.

9 Q In your opinion, should the Commission
10 exercise its authority to not certify the auction if
11 the auction rules are followed but prices are
12 excessive based on comparable market prices at the
13 time for comparable products?

14 A The Commission will have -- be making its
15 decision on whether or not to allow the results to
16 flow through or to initiate any kind of action that
17 would stop them from flowing through. They're not
18 limited in what they consider.

19 And with respect to your specific question,
20 they would also have the recommendations from both
21 the auction manager and Staff and their own expert
22 advisors.

1 If your scenario was correct and that the
2 auction clearing prices were not -- were not in
3 their opinion indicative of a competitive result,
4 they're not limited on rejecting it for that reason
5 or I think that the manager and the Staff and
6 adviser may draw the same conclusion and not
7 recommend that the auction be approved.

8 Q And you think that the auction manager
9 should look at that evidence of what's going on in
10 the market for similar products when it reviews the
11 auction results?

12 A The auction manager is as part of
13 responsibility in the report that it submits to the
14 Commission asked to render an opinion on whether or
15 not the auction produced a competitive result.

16 Q Right.

17 But does that include evaluation of market
18 prices for similar products in the market?

19 A Not a quantitative analysis that I'm aware
20 of.

21 Q But they could do that?

22 A They could.

1 Q They're not required to do it, but the
2 Commission Staff could also do that. Correct?

3 A They could, yes.

4 Q Okay. Are you aware that in New Jersey
5 auction in the first year of the auction consumers
6 were charged frozen rates rather than
7 auction-established prices during the first year of
8 the auction?

9 A What I'm aware of is in New Jersey the
10 first year the auction was implemented was while the
11 state was still under the rate freeze.

12 Q So the answer to my question is yes?

13 A Yes. Yes. And the amounts that utilities
14 -- the costs that utilities incurred during the rate
15 freeze that were above the cost that it collected
16 from customers were allowed to be deferred.

17 Q Deferred in some sort of a phase-in to
18 customers?

19 A In some subsequent regulatory review of
20 those costs that the utilities had incurred costs
21 above what they were able to collect from customers,
22 they had the opportunity to go to the regulator and

1 collect those deferred amounts.

2 Q Did they collect all those costs?

3 A I don't know.

4 Q Okay. And you don't know whether they were
5 actually passed through to consumers or not, those
6 costs?

7 A I don't know.

8 MR. GIORDANO: Thank you. I have no further
9 questions, Your Honor.

10 JUDGE WALLACE: Does anyone have 15 minutes'
11 worth? Mr. Augspurger?

12 CROSS-EXAMINATION

13 BY MR. AUGSPURGER:

14 Q Good afternoon, Mr. McNeil. I'd like to
15 show you what has been previously marked as Morgan
16 Stanley Cross Exhibit 2.

17 JUDGE WALLACE: Mr. Augspurger, do you have
18 another copy of that?

19 MR. AUGSPURGER: I probably do.

20 Q Mr. McNeil, please refer to Request Number
21 2.01 and specifically subpart A. Could you review
22 that request and the response that was provided?

1 A The question is, is it your proposal that
2 such a formal investigation or proceeding could be
3 initiated by the ICC even if an auction had been
4 completed and auction cleared below the auction
5 clearing price? If so, under what circumstances?

6 Q And if that was corrected to read, Is it
7 your proposal that such a formal investigation or
8 proceeding could be initiated by the ICC even if an
9 auction has been completed and the auction cleared
10 below the auction starting price, what would your
11 answer be?

12 A The company's proposal doesn't in any way
13 limit the Commission's ability to review all the
14 information it has available to it.

15 The proposed reports by Staff and the
16 auction manager try to provide the Commission with
17 as much information about the process before and the
18 conduct of the auction and the results that came out
19 of that auction.

20 The Commission -- we believe that's the
21 information the Commission needs to make the best
22 informed decision, but it's not limited only to that

1 information.

2 So if the auction cleared below the
3 starting price but for other reasons the Commission
4 determined that there was a flaw, some other flaw or
5 some other problem with the auction that caused it
6 to initiate an action, it could still do so.

7 Q And would you agree with what I believe was
8 Ms. Juracek's testimony earlier today or perhaps
9 yesterday afternoon that the particular price
10 standing alone and in the absence the other factors
11 such as those that you've just generally referred to
12 would not be a basis for the Commission to initiate
13 a formal investigation?

14 A I agree.

15 MR. GIORDANO: Thank you.

16 (Whereupon a lunch recess
17 was taken until 1:20 p.m.)

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AFTERNOON SESSION

(Whereupon the proceedings are
now being stenographically
reported by Laurel A. Patkes.)

JUDGE WALLACE: We were going to continue cross
of Mr. McNeil if everyone is ready to go.

Mr. Goldenberg?

MR. GOLDENBERG: Allan (A-l-l-a-n) Goldenberg
(G-o-l-d-e-n-b-e-r-g) with the Cook County State's
Attorney's Office.

Good afternoon.

THE WITNESS: Good afternoon.

CROSS-EXAMINATION

BY MR. GOLDENBERG:

Q On Page 8 of your direct testimony starting
with Line 163, you begin to talk about why ComEd
needs a new procurement process at this time.

Would it be fair to say it's basically
because you divested yourself of your generation
resources, is that correct, just in a general sense?

A That's one of the factors, yes.

1 Q And then on Line 168 of your direct, you
2 note that one of the conditions for the removal of
3 the generation assets was that you entered into
4 supply arrangements with your affiliate, is that
5 correct?

6 A That's correct.

7 Q And when do these supply arrangements with
8 your affiliate end currently?

9 A 2006.

10 Q At the time you made them, you knew you had
11 an obligation to serve residential customers, didn't
12 you?

13 A Yes.

14 Q Could the affiliate arrangements have been
15 made for a longer period?

16 Again, I'm asking you could they, not
17 why they weren't.

18 A I suppose that's possible. It could have.

19 Q Can they be extended? Again, I'm talking
20 from a business standpoint. I'm not asking you to
21 predict the legal environment.

22 A The reason I think they can't be extended

1 is for the reasons that they wouldn't meet the FERC
2 Edgar standards as we understand them.

3 Q So if the judges and lawyer said that they
4 could meet the Edgar standard, could they be
5 extended?

6 There's nothing stopping them in your
7 mind other than choice and Edgar, correct?

8 A Well, also Exelon Generation's choice as
9 well.

10 Q I was talking sort of choice in the global
11 sense.

12 Again, they could be extended?

13 A If they could meet the Edgar standard.

14 Q Well, when you went to the General Assembly
15 in the context of the merger you were considering,
16 weren't long-term agreements something you were
17 looking to implement between Exelon and ComEd?

18 A Yes, and I think FERC's position has
19 changed since that time.

20 Q But that's an opinion, right?

21 A That's an opinion.

22 Q And you've never gone to FERC and asked

1 whether they would accept an extension under similar
2 terms that currently exist?

3 A No.

4 Q On Page 4 of your surrebuttal, and again,
5 I'm looking at Lines 76 to 78, you, in talking about
6 Dr. Steinhurst's claims, you indicate that there are
7 no restrictions on the evidence or proposals that he
8 (or any other party) could propose.

9 A I'm sorry. What line?

10 Q 76 through 78. Should be on Page 4 of your
11 surrebuttal starting at first and foremost.

12 A Yes.

13 Q Are you familiar with the ICC's March 9,
14 2005 suspension order?

15 A No.

16 MR. GOLDENBERG: Judge, at this point, I'd ask
17 you to take administrative notice of the March 9,
18 2005 suspension order of the Commerce Commission.

19 JUDGE WALLACE: In this docket?

20 MR. GOLDENBERG: Yes.

21 JUDGE WALLACE: That's part of the docket.

22 MR. GOLDENBERG: And I would direct the

1 witness's attention, there's a paragraph 1 which
2 reads, "The Commission should, without answer or
3 other formal pleadings, enter upon a hearing
4 concerning the propriety of the proposed tariff
5 sheets to implement a competitive procurement
6 process."

7 THE WITNESS: That's the suspension of the CPP
8 tariffs?

9 Q That's correct. That language is in the
10 Commission's March 9th suspension order, and now I'm
11 going to ask you, what do you base your assertion
12 that there's no restrictions on evidence or proposals
13 in this docket in light of that language?

14 A My assertion here is based on the fact that
15 other parties can bring into this proceeding either
16 evidence pertaining to the company's proposal or
17 propose other alternatives.

18 Q So you're not aware of anywhere in either
19 the Commission suspension order, resuspension order,
20 or any of the other orders where the Commission
21 invited other proposals or expanded the scope of the
22 docket beyond its two orders?

1 A No.

2 Q So it's just your opinion that if somebody
3 wanted to, somehow the law would magically allow it?

4 A I think this proceeding is, the company's
5 proposal and other proposals that are presented are
6 all fair for consideration.

7 Q So you think anybody could bring up any
8 subject matter or any idea relevant to ComEd in this
9 proposal and just present it?

10 A Within the scope of the procurement
11 alternatives.

12 Q And the scope is defined by who, the
13 Commission or your opinion?

14 A The scope -- this is my opinion. It's not
15 as a lawyer, but how ComEd procures power and how
16 that power will be provided for retail customers
17 after 2006 is what we're considering in this docket.

18 Q So we can consider renewable energy if we
19 felt like it?

20 A I don't know. I think so.

21 Q On Page 7 of your surrebuttal, Lines 143
22 and 144, you state in your criticism of

1 Dr. Steinhurst that, however, again, there's nothing
2 to back up the conclusion that if only ComEd were the
3 portfolio manager, customers would be better off.

4 What analysis did you do that would
5 show under an auction it would produce a lower price
6 than ComEd actively managing a portfolio?

7 And again, I'm talking about analysis
8 that you personally have done to reach that
9 conclusion, and I'm talking quantitatively.

10 A You are talking quantitatively?

11 Q Yes.

12 A There hasn't been a quantitative analysis.
13 It's been a qualitative analysis.

14 Q And what are you basing your opinion on
15 there that your result would be better than what
16 Dr. Steinhurst is proposing?

17 A In the alternatives where ComEd would
18 actively manage a portfolio, it would have to acquire
19 resources of a variety including the ones that
20 Dr. Steinhurst listed in his testimony, and it would
21 have to assemble that portfolio, and part of that
22 process would necessarily include managing all the

1 volume and price risks that go along with that
2 including the risks that volumes will change overtime
3 due to customer switching, weather, and load growth,
4 things like that, as opposed to the alternatives of
5 procuring from the market full requirement service
6 where the suppliers manage that and perform the
7 portfolio management.

8 And in exchange for that, those
9 suppliers will provide a fixed price for doing all
10 that risk management service as opposed to the
11 company managing those risks and ultimately customers
12 bearing those risks as events change.

13 So the analysis is based on that type
14 of comparison.

15 Q Now, there's nothing stopping the company
16 from obtaining the expertise to actively manage a
17 portfolio, is there?

18 A No, as I said, it can be done.

19 Q Are you aware of what point the industry
20 started developing those skills? It's a relatively
21 recent phenomenon, right? I mean, it's not a hundred
22 years people have been doing it, right?

1 A No. It's evolved over the '90s. As states
2 started restructuring in the middle 1990s, wholesale
3 and market competition developed, and those kind of
4 skills became more evident to the market.

5 Q And that would be the same period of time
6 that ComEd has been evaluating its options on what to
7 do post transition, is that correct?

8 A No, not since that time.

9 Q Well, didn't you start thinking about an
10 auction or a merger in '93?

11 Well, strike that question.

12 Didn't you start thinking about an
13 auction or some type of procurement method in 1993?

14 A No.

15 Q When did you?

16 A The first time that we started looking at
17 what methods were being used around the country would
18 have been in 2003 sometime.

19 Q I'm sorry. I said '93. I meant 2003.

20 And you made a decision not to develop
21 that expertise in-house?

22 A It's not related to that decision. Well,

1 the auction proposal has the portfolio management
2 function in the competitive market, not in the
3 utility.

4 Q Correct.

5 And had you stayed with affiliate
6 purchases, wouldn't you have needed some of those
7 skills to sort of round out your portfolio to serve
8 post transition?

9 A No. Under the affiliate arrangements that
10 are currently in place, all the portfolio management
11 is done by the affiliate.

12 Q So you would have left it that way. So
13 that was the model you were considering?

14 A That's the model we have now.

15 Q Was that what you were considering when you
16 were thinking about your IP merger?

17 A Yes. It would have been similar to the
18 arrangements that are in place today.

19 Q And you were confident at the time that you
20 went down to the General Assembly that that would
21 have resulted in reasonable rates for ratepayers, is
22 that correct?

1 A We felt it could.

2 Q Are you aware of the Ohio auction
3 experience?

4 A Yes.

5 Q Is that the same approach to an auction
6 that you're proposing here on a general level that
7 they tried in Ohio?

8 A The type of auction that they ran in Ohio
9 is similar to the one that we're proposing.

10 Q So it's a declining type auction where
11 everybody gets paid the same price?

12 A Yes.

13 Q Did the auction result in a price in Ohio
14 that was ultimately passed on to ratepayers?

15 A No.

16 Q Was this because the regulated rate in Ohio
17 was lower than the rate that would have resulted from
18 the auction?

19 A I'm sure that was part of the consideration
20 that the Commission took into account when it made
21 its decision to reject the auction.

22 Q Okay. Starting on Page 16 and continuing

1 on Page 17 of your surrebuttal, you talk about why
2 the Illinois auction is superior.

3 Then you state around Lines 367 and
4 368 that it achieves benefit for consumers by
5 balancing the need for rate stability by offering the
6 ability to take advantage of market pricing.

7 What do you mean by rate stability?

8 A By rate stability, I mean changes in energy
9 prices over time, at a minimum from year to year and
10 longer term to smooth out wholesale market price
11 fluctuations for smaller customers.

12 Q Would you consider a ten percent increase
13 in generation rate rate stability?

14 A It's not defined in quantitative terms.

15 I suppose it depends upon... It's in
16 the customer's perception what stable means.

17 Q I'm looking for your perception.

18 Is a ten percent increase stable from
19 year to year?

20 A I think it would be stable if the
21 underlying market movements were -- for example, if
22 the wholesale market was moving 30 percent or 40

1 percent and the rate to customers was moving 10
2 percent, that would be stable relative to the
3 wholesale market price movement.

4 Q So if the auction resulted in a result that
5 was a 20 to 30 percent increase and everything else
6 was relatively unchanged from the previous year,
7 would you consider that stable?

8 A No.

9 Q So where would you sort of draw the line in
10 terms of stability from year to year where either the
11 Commission or consumers should sort of step in and
12 make changes?

13 A I'm not defining it in numerical terms.
14 I'm defining it in terms of smoothing out wholesale
15 market prices for retail customers.

16 Q What analysis did you do in reaching your
17 conclusion that the actual dollar value of rates
18 would be reasonable as a result of the first auction
19 given that the Commission hasn't been presented with
20 any actual numbers at this point?

21 A We've done one analysis that we provided in
22 data response that shows a buildup of, one potential

1 scenario, of what the market price would be and then
2 added the delivery component to that and compared it
3 to where rates have been and where they would change
4 from where they are now.

5 Q And can you tell me what that market price
6 would be?

7 A In that example, the market price was \$50.

8 Q And can you compare that percentagewise to
9 the current cost of generation?

10 A We estimate a total bill impact for
11 residential customers would be, in that example, a
12 little over 13 percent.

13 That included some increase in the
14 delivery component as well.

15 Q What financial incentive does ComEd have
16 under the auction proposal to act in the best
17 interest of residential and small commercial
18 customers from purchasing power in the wholesale
19 market?

20 A ComEd has an obligation to provide power to
21 customers at just and reasonable rates.

22 In addition, you know, the company

1 reports to various bodies, to this regulator as well
2 as to the General Assembly, and it's not in the
3 company's interest to have rates that are either not
4 just or reasonable.

5 Q But is there any kind of financial
6 disincentive if rates just go up?

7 A Well, ultimately, the financial
8 disincentive is if we're not allowed to recover those
9 costs.

10 Q And you think that the Illinois Commerce
11 Commission can value recovery of FERC-approved
12 generation costs in a power auction based on your lay
13 understanding?

14 A Based on my lay understanding, no, but I
15 don't know.

16 Q So in your mind, one of the benefits is
17 ComEd's investment is protected in the sense that if
18 the Commission approves the auction, you'll receive
19 payment for what you went out and did without risk?

20 A Well, we believe that this is the best way
21 because the risk is being managed by those entities
22 that are able to do it at the lowest possible cost.

1 Clearly, the company wants to recover
2 prudently incurred costs that we have in obtaining
3 the power from the market and providing that to
4 customers, and so that is something that, you know,
5 we obviously care about, but we also care about rates
6 being just and reasonable for customers.

7 Q All right. Hopefully my last question.

8 On Page 10 of your rebuttal testimony,
9 you have a table on affiliate purchases, and you have
10 a column that you labeled primary reasons ComEd
11 believes these scenarios do not serve the interests
12 of customers better than the Illinois auction
13 proposal.

14 A I'm sorry. You said rebuttal testimony?

15 Q Yeah, Page 10 of your rebuttal.

16 A Yes, I have it.

17 Q And you have in the one column, would not
18 likely pass FERC Edgar standards for PPA approval?

19 A Yes.

20 Q What do you base your opinion on?

21 A On our understanding of how FERC is
22 applying Edgar standards to affiliate contracts.

1 Q And would you agree that the concern of
2 FERC in sort of the Edgar line of cases was that
3 affiliate contracts not be above market as a general
4 matter?

5 A I think as a general matter that's correct.

6 Q And Illinois hasn't, as a general matter,
7 been a concern to FERC during the transition because
8 of the current regulatory price cap in all the
9 different restrictions, is that correct?

10 A FERC has not applied Edgar to my knowledge
11 in states that are still operating under a rate
12 freeze.

13 Q You said it better than I did.

14 But you haven't heard definitively
15 from FERC that that approach wouldn't meet the Edgar
16 standard, have you?

17 A We've not filed anything at FERC to get a
18 ruling from them.

19 MR. GOLDENBERG: Thank you. I have no other
20 questions.

21 JUDGE WALLACE: All right. Mr. Rosen?

22 MR. ROSEN: Good afternoon. I'm Larry Rosen,

1 and I'm with CUB, Citizens Utility Board.

2 THE WITNESS: Good afternoon.

3 CROSS-EXAMINATION

4 BY MR. ROSEN:

5 Q You were sitting here when Ms. Juracek was
6 testifying, were you not?

7 A Yes.

8 Q And she was asking questions about the PJM
9 market.

10 Do you remember that line of questions
11 being asked of her?

12 A Yes.

13 Q And she said that in the PJM market, there
14 were a lot of sellers of power and there were a lot
15 of buyers of power.

16 Do you remember that?

17 A Yes.

18 Q And she had said that of those -- well,
19 approximately how many sellers are there if you know,
20 hundreds, thousands, 20s, 30s?

21 A I think hundreds.

22 Q And how many buyers are there -- same

1 amount, hundreds?

2 A Hundreds.

3 Q And so when she said that there were
4 hundreds of buyers but then she said that as to all
5 those buyers, Commonwealth Edison represented 15
6 percent of something, do you remember that testimony?

7 A I believe she was referring to ComEd's
8 portion of PJM's demand.

9 Q And so of the hundred buyers, Commonwealth
10 Edison makes up 15 percent of that demand, isn't that
11 correct?

12 A I haven't verified that number but I'll
13 accept it for now.

14 Q Do you know of any other buyer in the PJM
15 market that's as high as 15 percent?

16 A I think there are some. I think AP has a
17 larger demand than ComEd does.

18 Q Okay. Any other ones?

19 A I'm not sure about Dominion.

20 Q So to your knowledge then, Commonwealth
21 Edison may be the second largest buyer of power in
22 the PJM market?

1 A I think we're one of the largest.

2 Q Now, in that 15 percent, is that just what
3 they acquire on PJM in terms of what they need in
4 addition to their full load requirements or does that
5 represent even your full load requirements if you
6 know?

7 A Utilities more so on the east coast of PJM
8 are buying all of their supply for their default
9 customers, a hundred percent of their supply for
10 their default customers from competitive markets.

11 So states like New Jersey, Maryland,
12 Connecticut, Maine, Massachusetts, Rhode Island are
13 buying a hundred percent requirements.

14 Other utilities that are still either
15 in transition or in states where they haven't
16 restructured may only be buying residual
17 requirements.

18 Q And is Commonwealth Edison buying its
19 residual requirements on the PJM market?

20 A ComEd today is buying all of its
21 requirements from Exelon Generation.

22 Q I guess my question is, if you get to a

1 point where ComEd has to acquire a hundred percent of
2 its base load and it buys it in the PJM market, will
3 that 15 percent increase to a higher percentage?

4 A No. The 15 percent is ComEd's total demand
5 in relation to PJM's total demand.

6 Q So when she said 15 percent, she was
7 saying, assuming that Commonwealth Edison had to get
8 its total requirements out of the PJM market, it
9 would be 15 percent above the total available between
10 buyers and sellers?

11 A I think it's the maximum peak demand of
12 ComEd compared to the maximum peak demand of PJM.

13 Q That would still make it one of the
14 largest, if not the second largest, buyer on that
15 particular market?

16 A Yes.

17 Q I have to ask this question. I don't mean
18 to embarrass you, but how long have you been an
19 employee of Commonwealth Edison?

20 A 28 years.

21 Q And are you also an employee of any of the
22 Exelon entities?

1 A No.

2 Q Do you have stock options?

3 A Yes.

4 Q And are your stock options tied into what
5 stock, Exelon Corporation stocks?

6 A The only stock, yes.

7 Q Do you know whether your options are in the
8 money or out of the money at this point?

9 A I haven't looked.

10 In my 28 years, I have worked in
11 Exelon companies for a period of time, but right now
12 I'm only an employ of ComEd.

13 Q At what point, did Commonwealth Edison
14 divest itself of the nuclear plants?

15 A The year?

16 Q Was that around 1999, 1998?

17 A '98 or '99. I don't remember.

18 Q Okay. And I think you said in your
19 rebuttal testimony and possibly in response to some
20 of the questions, as it stands now, Commonwealth
21 Edison --

22 A I'm sorry. I made a mistake.

1 Q That's okay.

2 A The divestiture of the fossil plants
3 occurred around that time.

4 The transfer of the nuclear plants was
5 more like 2001.

6 Q Let's go through 2001 then.

7 From 2001 to 2006, you knew at some
8 point that your contract with Exelon would expire?

9 A Correct.

10 Q And you would have to go out and acquire
11 full load through some method?

12 A Yes.

13 Q And I think you said in your rebuttal
14 testimony in response to some of the questions, as it
15 stands now, Commonwealth Edison, in your opinion,
16 doesn't have the expertise to manage its own
17 portfolio?

18 A Correct.

19 Q Okay. But you knew in 2001 when you
20 divested yourself of the nuclear plants and back
21 earlier when you divested yourself of the coal or
22 fossil fuel plants, that at some point, Commonwealth

1 Edison would have to go on the market to acquire
2 electricity in order to meet the requirements of its
3 customers?

4 A Yes.

5 Q So from 2001 to 2006, it did nothing
6 internally to create the expertise in order to do
7 that on its own?

8 A We consider the portfolio management
9 function part of the competitive market.

10 Q So you were putting that risk on the
11 shoulders of the sellers rather than on the risk of
12 Commonwealth Edison is what you're saying in other
13 words.

14 A No. That function just -- it's not a
15 utility function today.

16 Q It's the function of what, sellers of
17 power?

18 A Yes.

19 Q And Commonwealth Edison is not a creator of
20 power at this point in time, is it?

21 A Correct.

22 Q All right. So when you say it's a function

1 of the seller, we're talking about sellers that
2 aren't Commonwealth Edison?

3 A Yes.

4 Q So again, you're putting the risk of a
5 portfolio manager on the sellers of power and not
6 Commonwealth Edison power?

7 A Yes.

8 Q Now, under the proposal, if you know, do
9 you expect Exelon to be a bidder in the auction as
10 proposed in this particular proceeding?

11 A I don't know what they're doing. I don't
12 have any firsthand knowledge of what Exelon is doing
13 but we expect them to participate.

14 Q Okay. And did you say in your testimony at
15 some point that if this auction process is approved
16 and Exelon becomes one of the successful bidders that
17 that might avoid FERC and Edgar review of that
18 particular contract?

19 A We think in that scenario that the contract
20 would meet FERC Edgar's standards.

21 Q In and of itself just as a result of it
22 being part of the auction?

1 A Yes.

2 Q But if you had negotiated a bilateral
3 contract with Exelon, then you would have to be
4 concerned about the possibility of FERC or Edgar
5 nullifying that particular contract, is that correct?

6 A Right. We wouldn't have a competitive
7 process to meet the standard.

8 Q But I think you said in response to Allan's
9 question that under your knowledge of what FERC does
10 and what Edgar means, they would be more concerned if
11 that bilateral contract had set a price higher than
12 the market rather than lower than the market, isn't
13 that correct?

14 A I think that's one of their main concerns.

15 Q Now, I recall from your testimony -- the
16 reason I'm not referring to it specifically is
17 because I'm not quite certain that I have your
18 corrected rebuttal so I don't want to be rummaging
19 around thinking I'm there when I'm not there, but I
20 recall you saying in your testimony or in your
21 rebuttal that you also expected Exelon to be a...

22 Let me start over.

1 There's nothing in the bid rules that
2 say that a party that's a successful bidder can't
3 supply other successful bidders as well; isn't that
4 correct?

5 A There are some rules about what's allowed
6 and what certifications have to be made, but there's
7 no prohibition from that.

8 Q Okay. So under the rules as proposed now,
9 Exelon can be a primary bid winner, isn't that
10 correct?

11 A Yes.

12 Q And it could also be the supplier of other
13 bidders that are successful in the auction process,
14 isn't that correct?

15 A Subject to those certifications they have
16 to make, yes.

17 Q Okay. And if I remember your testimony
18 correctly, there was no requirement on these other
19 bidders to disclose who their sources were, isn't
20 that correct?

21 A It depends upon the nature of that contract
22 between those two parties.

1 There are certifications -- if they
2 have sources of power that are from other direct
3 participants in the auction that require disclosure,
4 they need to make those disclosures.

5 Q Okay. Are you saying that they would have
6 to disclose under all circumstances that they're
7 using Exelon as a supplier of the power that they're
8 obligated to supply under the procurement process?

9 A Not under all circumstances. Depending on
10 what the product is that they're buying from Exelon,
11 they may be required to certify.

12 Q Now, I'm going to give you a hypothetical.
13 Let's say that we have a tranche and
14 it comes out to be \$30 a megawatt per hour, okay, and
15 Exelon and a bunch of others bid and they're
16 successful at that. They get 30 bucks an hour. Are
17 you following me so far?

18 A Yes.

19 Q All right. So that means that Exelon is
20 selling its power to Commonwealth Edison \$30 a
21 megawatt hour?

22 A Correct.

1 Q But then there are suppliers who are also
2 selling it as \$30 an hour, isn't that correct?

3 A Correct.

4 Q Now, under that scenario, if those
5 suppliers are purchasing from Exelon to help them
6 meet their requirements under the auction process, is
7 it your assumption that they're going to be paying
8 Exelon more, less than, or equal the amount to that
9 \$30 that they're required to sell their electricity
10 at?

11 A The product that ComEd is buying through
12 the auction is a full requirements product, and the
13 contracts that are entered into between Ex Gen and
14 other suppliers if they exist may be for other
15 products, so the pricing wouldn't be...

16 One of the types of sales that would
17 require disclosure, for example, is if Exelon
18 Generation was selling a full requirements product to
19 another auction participant who then is selling that
20 same energy to ComEd. That requires disclosure.

21 Q Okay. That requires disclosure that Exelon
22 is doing that, right?

1 A Both parties would have to disclose that.

2 Q But that doesn't mean that the price that
3 Exelon is selling to that supplier is the same price
4 that the successful bidder is getting for the
5 electricity it's selling. It could be a lower price,
6 couldn't it?

7 A That the second supplier could be selling
8 at a lower price than what it's paying?

9 Q Yes. In other words, and maybe I'm not
10 making myself very clear, but let's say bidder B
11 who's now Exelon is supplying power at 30 bucks a
12 megawatt hour, and it's using Exelon to help it meet
13 those contractual obligations.

14 Would you expect that second bidder to
15 be paying Exelon that same \$30 an hour or would you
16 expect that bidder to pay something lower to Exelon?

17 A I think it depends upon what the contract
18 is.

19 Q If the contract is identical.

20 A That would not be allowed. If the contract
21 is full requirements, both bidders can't participate
22 in the auction both selling full requirements and to

1 each other full requirements.

2 That's one of the examples of the
3 types of transactions between parties that is not
4 allowed in an auction. Those suppliers would be
5 combined for the purposes of the auction into a
6 single supplier.

7 Q Under what scenario then would Exelon be
8 supplying a bidder who was successful in the auction?

9 A They might be supplying them base load
10 only. They might be selling them some intermediate
11 power or they might be selling them peak power.

12 Each of them has their own pricing.
13 For example, just to use some illustrative numbers,
14 if \$30 was your example of the full requirements
15 price, that might be made up of \$20 for base load,
16 \$40 for intermediate, and \$80 for peaking, but when
17 you put it all together, the full requirements price
18 comes in lower.

19 So it's possible Ex Gen or any bidder
20 can be selling a product to another bidder at a price
21 higher than the auction price and still be fine.

22 Q Okay. But under the rules that exist now,

1 at least Exelon could be a primary supplier and a
2 secondary supplier, isn't that correct?

3 A That's correct.

4 Q Now, in this auction process, I read the
5 testimony to mean from Commonwealth Edison employees
6 and experts in this case that in order for the
7 process to be successful, there has to be a wholesale
8 market fully developed, isn't that correct?

9 A It relies on a competitive wholesale
10 market.

11 Q Have you read Hogan's testimony?

12 A Not all of it but I'm aware of it.

13 Q And is it your reading of his testimony
14 that he believes that a full wholesale market exists?

15 A I believe he does say that.

16 Q And one of your other expert witnesses is
17 Hieronymus?

18 A Correct.

19 Q And you read his testimony to say that he
20 believes that a full wholesale market exists?

21 A Yes.

22 Q And do you believe a full wholesale market

1 exists?

2 A Yes.

3 Q Do you know what a 10-K filing is with the
4 Securities and Exchange Commission?

5 A Yes.

6 Q Have you ever had an opportunity to review
7 a 10-K filing that Commonwealth Edison has ever
8 filed?

9 A I've looked at a few of them over time.

10 Q Do you ever participate in the formulation
11 of the 10-Ks that Commonwealth has filed from year to
12 year with the Securities and Exchange Commission?

13 A No, I don't.

14 Q Do you know what the purpose of the 10-K
15 filing is?

16 A To report events and things that are
17 occurring to the company which can, you know, create
18 changes in its financial condition.

19 Q Okay. And you know what the Securities and
20 Exchange Commission does generally, don't you?

21 A Yes.

22 Q And they were formed to protect investors,

1 isn't that correct?

2 A Yes.

3 Q And one of the purposes of the 10-K is to
4 make sure that the company is putting accurate
5 information in there so that to the extent investors
6 look at that material, they won't be misled, isn't
7 that correct?

8 A Yes.

9 MR. ROSEN: May I approach the witness?

10 JUDGE WALLACE: Yes.

11 MR. ROSEN: Do you mind if I look over your
12 shoulder?

13 THE WITNESS: No.

14 Q All right. This was the 10-K filing that
15 Commonwealth Edison, well, Exelon Corporation filed
16 on February 23, 2005, and it's for the period ending
17 December 31, 2004; okay?

18 A Okay.

19 Q And I want to direct you to Page 9 in the
20 second paragraph.

21 First of all, you know what an RTO is,
22 don't you?

1 A Yes.

2 Q And is it your understanding that not every
3 state agency or state regulatory agency has endorsed
4 the concept of an RTO?

5 A I'm aware of that.

6 Q Okay. And some have fought against the
7 existence of RTOs, have they not?

8 A Yes.

9 Q And, in fact, some organizations and
10 companies and sellers and buyers have given up trying
11 to form an RTO as a result of regulatory resistance,
12 isn't that correct?

13 A I don't know if any have given up but I
14 know that there's been resistance.

15 Q Okay. And an RTO is one of those
16 organizations that you think contributes to the
17 development of a wholesale market, isn't that
18 correct?

19 A Yes.

20 Q And to the extent that there are less RTOs,
21 there would be less of a wholesale market overall,
22 isn't that correct?

1 A I don't think it depends on the number of
2 RTOs, but the RTO is one of the market structures
3 that allows that to work.

4 Q Okay. Are you aware that someone at
5 Commonwealth Edison said, and I quote, "Exelon
6 supports the development of RTOs and implementation
7 of standard market protocols but cannot predict their
8 success or whether they will lead to the development
9 of the efficient, large, successful wholesale
10 markets."

11 Have you ever did he know that
12 statement before?

13 A No.

14 Q Okay. Well, apparently someone at
15 Commonwealth Edison believes, at least in accordance
16 with this 10-K statement, that maybe the wholesale
17 markets aren't as developed as they hoped they would
18 be.

19 Is that a fair reading of that
20 particular statement?

21 A I read this to mean that the continued
22 development of RTOs, that we're not predicting on

1 whether or not they'll lead to the larger envisioned
2 geographic markets.

3 Q Okay. But let's read the next sentence
4 though. It says, "The development of large
5 competitive wholesale electricity markets would
6 facilitate an auction to meet ComEd's and Peco's POLR
7 load obligations with reliable wholesale electricity
8 supply when their PP-As with generation spark."

9 Do you read that?

10 A Yes.

11 Q So if you read those two in conjunction
12 with one another and they're written that way,
13 doesn't that suggest to you that to a certain extent,
14 the lack of further development with the RTOs has
15 somewhat negatively impacted the development of
16 wholesale markets?

17 A I think what this means that inside the
18 area that PJM operates, there are, as you mentioned,
19 there are some states and some companies that have,
20 for whatever their own reasons, avoided or resisted
21 going into an RTO, and as those areas join the RTO,
22 it makes the market even more competitive.

1 Q Okay. And the more competitive the market
2 is, in your opinion, the more successful this auction
3 might be?

4 A I think the more competition there is, the
5 better.

6 Q Okay. But when the statement was written,
7 they were suggesting that there could be even more
8 competition in the marketplace if there wasn't this
9 resistance to RTOs?

10 A Well, I mean, we have an RTO. It's PJM and
11 it's very large, and I think this is intending to say
12 that there's still ongoing development of RTOs, and
13 the more states and the more companies that join, the
14 more competitive it's going to be.

15 Q Competitive being the wholesale market
16 we've been talking about?

17 A Access to more buyers and sellers.

18 Q Do you know who caused that particular
19 statement to be put into the 10-K that I just showed
20 you?

21 A No.

22 Q You don't know whether it was Exelon

1 Corporation that caused that to be put in?

2 A It's an Exelon statement so I would think
3 it's an Exelon, you know, drafted by someone in
4 Exelon but I don't know.

5 Q You don't know the individuals who opined
6 that there's these problems with the RTOs, and the
7 wholesale market could be more competitive if more
8 RTOs formed?

9 A No, I don't know.

10 Q In your opinion, when someone either from
11 Exelon Corporation or part of their entities caused
12 that statement to be made, they weren't trying to
13 mislead anyone to your knowledge, were they?

14 A No.

15 Q Do you know who Ms. LaCasse is?

16 A Yes.

17 Q And who is she?

18 A She's the auction manager in New Jersey,
19 and she's a consultant that we've, an expert that
20 we've retained to help us with our auction side.

21 Q And when was she retained as an expert by
22 Commonwealth Edison?

1 A Around mid 2004.

2 Q And she's being paid by Commonwealth Edison
3 to testify in this proceeding?

4 A Yes.

5 Q And she's being paid to come in and tell us
6 here that this auction process is a good thing.
7 Isn't that correct?

8 A She's here to give her opinion, yes.

9 Q Okay. And her opinion is this auction
10 process proposed here is a good thing?

11 A Yes.

12 Q Okay. And doesn't Commonwealth Edison also
13 plan to use her as the auction manager?

14 A We recommend her as the auction manager.

15 Q Has Commonwealth Edison looked to see
16 whether anyone else could serve in the capacity as an
17 auction manager?

18 A We have not interviewed other firms.

19 Q Have you interviewed any other individuals
20 within her firm to be the auction manager?

21 A No.

22 Q Were you in attendance at this meeting,

1 stockholders or shareholders meeting that took place
2 in New York in August of 2005?

3 A No.

4 Q Well, there was some slides shown during
5 this meeting to shareholders, and I want to run by
6 some of the statements that are in these slides to
7 see whether you agree with them or not.

8 A Okay.

9 Q One is entitled "Power Team: Current state
10 of the portfolio," and then it has Exelon. It says,
11 "We are taking advantage of beneficial market
12 conditions. Power prices continue to rise driven by
13 higher fuel prices and tightening fundamentals."

14 When they say driven by higher fuel
15 prices... Well, first of all, do you agree with that
16 statement?

17 A It's a statement made by Exelon Generation.
18 I have no reason to disagree with it, but I don't
19 know what the basis of the statement is.

20 Q Do you also agree with the statement also
21 made during the shareholders meeting that rising fuel
22 prices in the Midwest market -- and then it cites

1 Central Appalachian coal and natural gas -- are
2 pushing forward PJM NI-HUB prices higher.

3 Do you agree with that statement?

4 A Again, I don't follow that data. I have to
5 rely on them if that's what they're saying.

6 Q Okay. So you don't know whether it's true
7 or false? You don't have an opinion either way?

8 A I don't handle coal prices, no.

9 Q All right. So you don't know whether coal
10 or natural gas --

11 A I've observed the electricity market prices
12 going up.

13 Q Okay. And what do you think is driving
14 those prices up -- the generators of electricity
15 through nuclear power or generators of electricity
16 using coal and natural gas?

17 A I think more related to fossil fuel prices.

18 Q So you think in terms of a wholesale
19 market, prices are as high as they are as a result of
20 companies that generate electricity through coal and
21 through natural gas?

22 A I think that's the primary driver.

1 Q And as far as you know, when people are
2 bidding on an auction process proposed here, you're
3 going to get people who supply electricity by
4 generating it through nuclear reactors, for instance,
5 Exelon Generation; isn't that right?

6 A That's their generation, but they'll need
7 other forms of generation in order to provide full
8 requirements.

9 Q Okay. But Exelon Generation in part is
10 certainly going to rely on nuclear reactor created
11 electricity?

12 A For their base load.

13 Q Yes.

14 And then other bidders are going to be
15 companies that produce electricity through the use of
16 coal, isn't that correct?

17 A Yes.

18 Q And other bidders are going to be creating
19 electricity through the use of natural gas as far as
20 you know?

21 A Yes.

22 Q Of those three entities, and that is the

1 entities that produce electricity either through
2 natural gas, coal, or nuclear reactors, who has the
3 lowest cost margin?

4 A I think that with the product being full
5 requirements, the portfolio managers that are
6 competing to sell ComEd are going to make all of
7 that. I mean, each portfolio manager will need some
8 base, some intermediate, some peak, so I don't think
9 that, you know, one supplier, regardless of what they
10 own, will have an advantage over the other one.

11 Q Okay. But the supplier that relies
12 primarily on nuclear generated electricity should
13 have a lower cost margin overall, isn't that correct?

14 A That's the lower cost-based generation.

15 Q Now, during this entire proceeding, I've
16 heard something called prudence review.

17 A Uh-huh.

18 Q And I'm sure everyone has their own
19 definition.

20 What is your definition of a prudence
21 review?

22 A My understanding is the prudence review is

1 a review of decisions that a utility made in the
2 course of doing its business for which it's seeking
3 cost recovery from customers, and the Commission
4 reviews the decision that was made, and with the
5 information that the utility had available to it at
6 the time or should have reasonably known, they look
7 at did the utility act in a prudent manner.

8 Q And if they determine that all of the costs
9 that are part of this are prudently incurred by
10 Commonwealth Edison, you hope that the Commission
11 approves a charge to the customer that takes all
12 those costs into consideration. Is that a fair
13 statement?

14 A The cost of the power?

15 Q Well, everything assuming all that was
16 prudently required.

17 A Yes.

18 Q But if the Commission determines, for
19 instance, that the cost of the power isn't prudently
20 required, Commonwealth Edison stands the risk that it
21 might not recover a hundred cents on the dollar for
22 what it's paying to acquire that power, isn't that

1 correct?

2 A If that's what the Commission did, that
3 would be the result.

4 Q And here you're trying to get the prudence
5 review before the fact, isn't that correct? In other
6 words, the prudence review is really to take a look
7 at our auction process and approve it as is.

8 A It's part of this proceeding.

9 Q Okay. And sort of what you're hoping here
10 is that they accept your system as being prudent and
11 then there isn't a prudence review of the prices that
12 are eventually going to be paid by you and then
13 hopefully passed on to the customer, isn't that
14 correct?

15 A Well, I don't understand a prudence review
16 to be a prudence review of prices. It's prudence of
17 the utility's decisions that it makes in the course
18 of doing its business.

19 So in the auction, in this particular
20 proposal, the utility is not running the auction.
21 We're not making the decisions in the auction. We're
22 asking for the prudence review of the process up

1 front and then the opportunity to review that after
2 the fact, but I don't know what decision the utility
3 made during the course of the auction that would
4 subject that to a prudence review.

5 Q Okay. Well, you got around answering my
6 question.

7 Now, I think as part of your
8 testimony -- well, let me ask you this. Are you
9 generally in favor of prudence reviews after the fact
10 or before the fact? What would you prefer?

11 A I think utilities would generally like to
12 have the prudence reviewed before the fact.

13 Q Okay. And as an employee of Commonwealth
14 Edison, I'm assuming that you would probably like
15 prudence reviews to occur before the fact, isn't that
16 correct?

17 A As a utility representative?

18 Q Yes.

19 A Yeah.

20 Q And you feel that that puts your company at
21 less of a risk of not being able to pass all of its
22 costs on to the consumer a hundred cents on the

1 dollar?

2 A I think the costs that the company is
3 asking for permission to incur and therefore recover,
4 it just moves the review of those costs and the
5 process, the decisions it's going to make, to incur
6 those costs up front, so the company does have a
7 lower risk that its decisions --

8 Q Aren't going to be second-guessed by
9 somebody?

10 A -- won't be second-guessed.

11 Q Okay. All right.

12 Now --

13 JUDGE WALLACE: You're approaching your time
14 limit.

15 MR. ROSEN: Okay. I'm almost done.

16 Q I want to have you turn to Page 10 of your
17 surrebuttal. I want to just make sure it's the same
18 chart.

19 A Surrebuttal?

20 Q Oh, excuse me, the rebuttal.

21 Okay. This is a document that you
22 prepared?

1 A Yes.

2 Q Okay. And here you say -- well, these are
3 some of the alternative procurement models that
4 Commonwealth Edison considered?

5 A Yes.

6 Q Okay. And then you go through them and
7 then you list the reasons as to why they were
8 rejected, right?

9 A Correct.

10 Q And if you look at the first one, it says
11 horizontal product procurement or IRP.

12 A Yes.

13 Q And one of the reasons that was rejected is
14 because that maximizes the need for an after the fact
15 prudence review?

16 A Correct.

17 Q Okay. And then go on to the next one. It
18 says cost index, and that was another one that
19 Commonwealth Edison looked at, is that correct?

20 A Yes.

21 Q And then it says one of the reasons that
22 was rejected was because it does not provide the

1 opportunity for full cost recovery to a utility if
2 they follow the Commission approved process.

3 A Correct.

4 Q And is that like a prudence review?

5 A No.

6 In this example, what that means is
7 that if the rates are based on formula but the
8 company has to go acquire its power from the market,
9 the cost that it incurs in providing the power may
10 not align with a formula.

11 Q Okay. And this is a formula approved by
12 the Commission?

13 A This alternative would envision that.

14 Q Okay. And then one of your primary
15 criticisms of Steinhurst's suggestions was the fact
16 that some of the suggestions required a prudence
17 review, isn't that correct?

18 A Yes.

19 MR. ROSEN: I have nothing further.

20 JUDGE WALLACE: All right. Anyone else?

21 MR. FOSCO: Staff can go.

22 JUDGE WALLACE: Okay. Mr. Fosco?

1 MR. FOSCO: Good afternoon, Mr. McNeil.

2 THE WITNESS: Good afternoon.

3 MR. FOSCO: My name is Carmen Fosco. I'm one
4 of the attorneys representing staff.

5 CROSS-EXAMINATION

6 BY MR. FOSCO:

7 Q I have a series of questions to sort of
8 clarify the proposal made regarding the enrollment
9 period and the opt in versus opt out.

10 When would the first enrollment period
11 begin in which a customer is eligible for a CPP
12 annual service to be asked to make a supply selection
13 for the supply period beginning January 2007?

14 A If the auction were run in the first ten
15 days of September for example, assuming the
16 Commission allowed those rates to go into effect, the
17 company would file its compliance tariffs within I
18 believe nine days after that, and that would be the
19 beginning of the 30-day enrollment window, the date
20 that the company filed its tariffs.

21 Q And what's your best estimate on when that
22 date would be with the assumptions you just made?

1 A End of September.

2 Q And then if I'm correct, in the second
3 enrollment period meaning in the second annual
4 auction, I think you've testified that that period
5 would begin around March 15, 2008?

6 A Yes.

7 JUDGE WALLACE: 2000 what?

8 MR. FOSCO: 2008.

9 Q Is it correct that the company proposes
10 that the default rate for the power purchase option
11 and interim supply service to customers is the hourly
12 rate?

13 A Yes.

14 Q If PPO and ISS customers do not make the
15 choice during the enrollment period to move to
16 bundled service, is it correct that their supply
17 choices would be to take either RES service or the
18 hourly service?

19 A The customers that were -- you're talking
20 about PPO and ISS customers?

21 Q Correct. If they do not make an election,
22 their choices would be to take either RES service or

1 the hourly service?

2 A Correct.

3 Q And I believe you might have established
4 this earlier but just to make sure we're clear,
5 current bundled customers eligible for a CPP-A
6 service that do not make a supply selection during
7 the enrollment period would automatically become
8 CPP-A customers?

9 A Correct.

10 Q And the customers that were automatically
11 moved to CPP service because they did not make an
12 election would be permitted to move to RES service
13 during the supply period?

14 A That's correct.

15 Q On seven-day notice?

16 A Yes.

17 Q All these policies we've just discussed
18 applied in the second and subsequent enrollment
19 period, is that true?

20 A That's correct.

21 Q Is it correct that customers on CPP-A
22 service can only move to the hourly service during

1 the enrollment period under ComEd's proposal?

2 A Yes.

3 Q Thus, it's correct that bundled customers
4 that do not make a selection during the enrollment
5 period that become CPP-A customers can become RES
6 service customers but cannot become hourly customers
7 during the supply period?

8 A That's correct.

9 Q I'd like to address the issue of prudence
10 again.

11 A Okay.

12 Q With respect to electricity purchased
13 through the auction process, what is the company
14 asking the Commission to find with respect to
15 prudence in this proceeding?

16 A In this proceeding, the prudence of the
17 entire competitive procurement process, the design,
18 the rules that we're proposing that govern the
19 conduct of the auction, and then, ultimately, after
20 the auction, you know, in reviewing the staff and the
21 auction manager's report and any other information
22 they deem appropriate, make a determination whether

1 or not there's cause to direct the company to not
2 pass those costs through to customers or,
3 alternatively, to recover it from customers.

4 Q Okay. So subject to the Commission's --
5 and again, I'm limiting my question to costs for
6 electricity purchased through the auction process.

7 A Yes.

8 Q So subject to the Commission's ability to
9 decide to investigate the auction results, the
10 company is asking the Commission to find that the
11 process proposed by the company is prudent and will
12 result in prudent and reasonable costs subject to
13 that investigatory power?

14 A Yes.

15 Q You testify on Page 13 of your direct
16 testimony that the descending clock auction process
17 is robust enough to determine prudence of the process
18 up front.

19 Can you explain what you mean by that
20 and in particular what you mean by robust in that
21 context?

22 A We think the process has well-developed

1 competitive features that assure that the
2 competitiveness of the auction is monitored. In the
3 pre-auction period where suppliers are coming in and
4 applying to bid in the auction, the process that
5 those suppliers go through in terms of becoming
6 eligible and qualified to bid in the auction, that
7 there are mechanisms built into the process that
8 would give early warning flags that say you have a
9 situation that may lead to a not fully competitive
10 result, and then what are the contingencies for how
11 to address those situations.

12 The certifications in association
13 rules that we're asking suppliers to make to the
14 auction manager and to staff are robust enough to
15 identify potential situations where bidders may be
16 coordinating their bidding behavior or acting in a
17 noncompetitive way and what the remedies are for
18 addressing those situations and then the mechanism of
19 the auction itself and how it drives the price down
20 until suppliers are no longer willing to sell at that
21 price and reveals only the bidders that are willing
22 to sell at the lowest possible price.

1 Those are all aspects of the
2 robustness that I was referring to that if the
3 process works properly will yield a competitive
4 result.

5 Q Thank you.

6 So it's a part of the robust nature of
7 this process that all the rules to be used to procure
8 power in this method are set forth in various auction
9 process documents?

10 A Right. We're proposing very detailed rules
11 that we think sufficiently cover all the
12 contingencies and the possibilities that would lead
13 to a noncompetitive result, so we're trying to
14 anticipate and design into the process all the
15 features and rules that we need to make sure that
16 we've anticipated all those possibilities.

17 Q Do you believe that all facts that the
18 Commission needs to make a prudence determination on
19 that process are before the Commission, putting aside
20 market anomalies or the other factors that would be
21 reviewed in the three-day review?

22 A Yes. I believe the company's proposal is

1 sufficiently complete.

2 Q Are the supplier forward contracts part of
3 the documentation that the company is asking the
4 Commission to look at in terms of making a prudence
5 determination in this docket?

6 A Yes.

7 Q The company is not seeking specific
8 approval as such of the SFCs, is that correct?

9 A Correct.

10 Q Is the company representing to the
11 Commission that those documents will remain the
12 supplier forward contracts that remain in effect
13 unless the company comes to the Commission again to
14 make some change?

15 A I believe what we've said is that the
16 supplier forward contracts would be locked down with
17 no further change 120 days prior to the auction, but
18 we've made every attempt to try to incorporate
19 feedback that we've gotten through this proceeding
20 into the supplier contracts and to harmonize the
21 Ameren and ComEd contracts in a way that meet all the
22 concerns that have been identified to the extent we

1 can in this proceeding.

2 Q And will staff be part of the review of
3 those final SFCs as part of the auction process?

4 A Yes.

5 Q Sticking with prudence, if I can now
6 address electricity purchases made through the
7 contingency provisions.

8 Is the company seeking the same or a
9 different prudence finding with respect to those
10 purchases?

11 A It's different. There are basically three
12 contingency plans that have been included in our
13 proposal.

14 One has to do with buying reductions
15 that are called for by the auction manager in
16 consultation with staff and their experts during the
17 conduct of the auction.

18 ComEd is not part of that
19 decision-making process although we've tried to
20 describe in detail how those decisions would be made
21 and under what circumstances would they be made so
22 that it's known up front what events trigger that

1 contingency and how it would work.

2 The other two contingencies have to do
3 with a supplier who entered into a contract and then
4 somewhere during the course of the contract defaulted
5 on the contract and ComEd would be required to go and
6 replace that contract from the market.

7 And we've proposed a contingency plan
8 that includes, depending upon the amount of power
9 that's at stake and the time remaining in the
10 contract between default and the next auction, how
11 those contracts would be replaced.

12 In that situation, the company agrees
13 to submit a full detailed report to the Commission on
14 all of the information related to the default and
15 what actions the company took in remedying or
16 replacing the power, and we understand that those
17 decisions a company makes are potentially subject to
18 prudence if the Commission were to find that the
19 company's actions in some way contributed to the
20 default.

21 The final contingency is in the event
22 that the Commission rejects the auction in that

1 three-day window, the first contingency would be to
2 understand what the cause of the rejection was and
3 whether or not it can be remedied in a way that the
4 auction could be rerun, but if that wasn't possible,
5 the company would meet with staff and work out an
6 interim procurement plan, and we understand that that
7 entire plan would be subject to a prudence review.

8 Q Okay. Thank you.

9 I believe, and maybe I'm looking at
10 this the wrong way, that you might have left out one
11 contingency scenario.

12 You've dealt with a situation where a
13 supplier defaults, but is it not also possible under
14 the supplier forward contracts for the company to
15 default?

16 A It is possible, yes.

17 Q In that event, where would that fit in
18 under the contingency plans if the company defaulted
19 for some reason? Highly unlikely maybe but possible.

20 A I don't know that we've actually considered
21 that one through, but I think it falls into the
22 general area of default and what happens in a

1 default.

2 Q Okay. Similar to how a supplier default
3 would be handled?

4 A Yes.

5 Q You've explained the various methods of
6 securing replacement electricity where there's a
7 deficiency in meeting the required tranches through
8 the auction process or because of default, and when I
9 look at those plans, they seem very much forward
10 looking in nature, but it strikes me that there could
11 be a default that has an immediate impact in terms of
12 time.

13 In other words, if a supplier would
14 default on, you know, January 10th for some reason,
15 there could be a need to procure some replacement
16 power on the very next day.

17 A Uh-huh.

18 Q And I'm not sure that your contingencies
19 address that.

20 Is there a plan as to how that would
21 occur? Would that be the spot markets?

22 A It's not an immediate replacement because

1 another supplier hasn't been selected to replace
2 those tranches.

3 So between the time of the default and
4 the time that the company can acquire replacement
5 power, we would need to use the PJM markets for
6 supply for those defaulted tranches.

7 Q I know you have a difference with
8 Dr. Schlaf's recommendation as to the language, but
9 would you agree, conceptually would you agree with
10 his testimony concerning the need for potential
11 prudence review for situations where the facts are
12 not before us?

13 A I think that we agree that if the company
14 is involved in decisions that ultimately change the
15 price of power the customers are paying, we
16 understand those decisions are subject to a prudence
17 review.

18 The difficulty we've had is in the
19 ones where the company clearly isn't involved and has
20 no part in the decision. That's where the
21 disagreement is.

22 Q Let me ask one other question.

1 I believe you refer in your testimony
2 that when a default occurs or if a default occurs
3 with a supplier, one of the events that will happen
4 is the company will make efforts to recover damages
5 against the supplier.

6 A Yes.

7 Q And is it your position that the company's
8 actions in connection with that litigation are
9 subject to an after the fact prudence review by the
10 Commission?

11 A Yes.

12 Q I may have heard this wrong, but I believe
13 I heard Ms. Juracek testify that in an effort to
14 mitigate the harm to consumers in the event of a
15 supplier default, the company would consider various
16 options, and I believe she mentioned that one
17 possibility would be seeing if the other suppliers
18 that are already out there could increase their
19 percentage of the tranches.

20 I don't see that in your outline of
21 the contingencies.

22 Is that included or not?

1 A Early in considering how to develop these
2 contingency plans, we considered the possibility that
3 there may be other viable suppliers in the auction
4 that would be willing to assume that responsibility
5 at the current price, but it seemed to us that the
6 suppliers would likely be more willing to accept the
7 current price if the market price had gone down.

8 And so we felt that it was important
9 that the process for replacing the power also be a
10 competitive process, and we recognize the need for
11 speed in that circumstance.

12 So that's one of the reasons why we
13 deviated from the auction to the RFP for the sake of
14 a faster replacement so that we didn't have the time
15 involved in setting up the auction.

16 However, if the amount of supply
17 that's been defaulted on is very large, we think the
18 benefits outweigh the extra days it would take to run
19 that, so we propose to run a new auction.

20 Q So to the extent that I heard or understood
21 Ms. Jurasek's testimony correctly, that's really not
22 what you understand the company's position to be

1 today as an option in the event of a default?

2 A My understanding is it's either RFP or an
3 auction.

4 Q Okay. Maybe kind of the last question or
5 last few questions.

6 You testified that the company --
7 there's still some minor modifications to the
8 supplier forward contracts being made or that may be
9 made at this time?

10 A I believe most of them have been made, but
11 I'm allowing for a couple minor things that still
12 might be worked out.

13 Q Are there further efforts being made to
14 have the provisions of the Ameren supplier forward
15 contracts and the ComEd supplier forward contracts
16 harmonized or similar?

17 A We've worked very hard with Ameren to try
18 to -- other than setting aside areas where we have
19 differences because of the products or because of the
20 RTO rules and things like that, we know that those
21 can't be harmonized but in all other areas we've
22 tried although I think there may be one or two very

1 small areas that we still don't have total consistent
2 language.

3 Q Okay. And that effort is still ongoing to
4 a small extent?

5 A Yes. I think there may be one or two open
6 issues.

7 MR. FOSCO: Thank you very much, Mr. McNeil.

8 JUDGE WALLACE: Okay. Who else?

9 Ms. Satter?

10 MS. SATTER: Thank you.

11 Good afternoon, Mr. McNeil.

12 THE WITNESS: Good afternoon.

13 MS. SATTER: My name is Susan Satter. I'm here
14 on behalf of the People of the State of Illinois, and
15 I just have a few questions for you.

16 CROSS-EXAMINATION

17 BY MS. SATTER:

18 Q In your rebuttal testimony, you respond to
19 Mr. Salvo's concern that Commonwealth Edison's
20 implementation plan calls for an extraordinarily
21 large volume of power to be purchased in a single
22 auction, and you respond that you appreciate his

1 concern.

2 Do you appreciate his concern because
3 you agree that it is riskier to obtain all supply in
4 one day as opposed to acquiring it over a longer
5 period of time?

6 A I agree that staggering purchases is
7 generally preferred than buying all your requirements
8 in a single day, yes.

9 Q And you justify the decision to obtain
10 everything on that first auction day on the basis
11 that the company has to rely on the market to obtain
12 supply because it no longer owns generation, correct?

13 A Correct.

14 Q Now, Commonwealth Edison has not owned
15 generation since what year?

16 A 2001.

17 Q Since 2001.

18 And you have obtained supply during
19 that period, is that correct?

20 A Yes.

21 Q And you have obtained your supply pursuant
22 to your contract with Exelon Generation and other

1 supply contracts, is that correct?

2 A Just the contract with Exelon Generation,
3 setting aside maybe some purchases from PURPA
4 qualifying facilities.

5 I mean, other than those small
6 exceptions, the company has a full requirements
7 contract with Exelon Generation.

8 Q So it has allocated its or delegated its
9 responsibility to purchase supply to Exelon
10 Generation during this period of time?

11 A It's acquiring those service from its
12 affiliate.

13 Q But it's still ultimately responsible for
14 obtaining that supply?

15 A Yes.

16 Q Is that correct?

17 A Yes.

18 Q And prior to your current position, you
19 were the director of energy acquisition for
20 Commonwealth Edison?

21 A Correct.

22 Q And for what period of time did you hold

1 that position?

2 A Last half of 2001 through 2002.

3 Q And when you were in that position, it was
4 your responsibility to manage the energy acquisition
5 for Commonwealth Edison?

6 A Right, which at the time was managing
7 primarily the contract with the affiliate.

8 Q Okay. Now, would you agree with me that
9 electricity is currently being bought and sold by
10 parties other than Commonwealth Edison?

11 A Yes.

12 Q And there is a pool of electricity
13 currently available to buyers?

14 A Yes.

15 Q And you would agree that there were sellers
16 interested in selling and buyers interested in buying
17 in this area?

18 A Yes.

19 Q And you expect that the pool of electricity
20 will continue to be available to buyers over the next
21 few years?

22 A Yes.

1 Q Commonwealth Edison though has chosen not
2 to enter into any contracts for supply after
3 January 1, 2007, correct?

4 A Correct.

5 Q Despite the fact that the electricity
6 supply is available?

7 A Correct.

8 Q Okay. The law does not prevent
9 Commonwealth Edison from having contracts for supply
10 after January 1, 2007, does it?

11 A Not that I know of.

12 Q Now, you also talk about in your direct
13 testimony just a few minutes ago what happens when
14 there's a supplier default under your auction
15 proposal, and in your testimony, you say that the
16 company will use PJM administered markets for supply
17 for certain periods of time.

18 A Correct.

19 Q So my question is, when we say PJM
20 administered markets, what is the scope of services
21 that are available?

22 A PJM runs a day ahead in realtime energy

1 markets. They ran capacity markets. They run
2 ancillary services markets, and we would procure the
3 services we need for our customers from those three
4 markets.

5 Q What about supply that might be available
6 through bilateral contracts?

7 A We would replace the supply through
8 bilateral contracts that are determined through the
9 contingency plan.

10 Those would result in bilateral
11 contracts determined through those competitive
12 processes.

13 Q Through the RFP?

14 A RFP or in some cases an auction.

15 Q Okay. Is the only way that you would enter
16 into the bilateral contracts is through the RFP or
17 the replacement auction?

18 A In our proposal, that's correct.

19 Q In your proposal. Okay.

20 And then you said that the acquisition
21 of that supply would be subject to review by the
22 Commission, is that correct?

1 A Yes.

2 Q And that's regardless of whether there's a
3 finding that Commonwealth Edison is responsible for
4 the default or the supplier is responsible for the
5 default?

6 A Right. What we agreed to is that any
7 decisions or actions that the company took in the
8 course of administering the procurement of
9 replacement power would be subject for the Commission
10 to review.

11 MS. SATTER: Okay. I have no further
12 questions.

13 JUDGE WALLACE: Mr. Gollomp, did you have any
14 questions?

15 MR. GOLLOMP: No.

16 JUDGE WALLACE: Mr. Reddick?

17 MR. REDDICK: If my choice is to follow the FM
18 voice, I think I'll go before the FM voice.

19 Mr. McNeil, we've met before. My name
20 is Conrad Reddick, and I'm representing the IIEC, and
21 I have questions in several discrete areas, and I
22 will try to give you headings so you know when we're

1 changing from one to the other.

2 CROSS-EXAMINATION

3 BY MR. REDDICK:

4 Q I'd like to start by talking about the post
5 2006 offerings that ComEd is planning for its
6 remaining bundled service customers.

7 Currently, there is an hourly service
8 available to ComEd's initial customers, is that
9 correct?

10 A Currently there's an hourly available for
11 all customers.

12 Q Great.

13 And can you confirm that ComEd plans
14 to provide such a service post '06 for both
15 residential and nonresidential customers?

16 A Yes, I can.

17 Q With respect -- well, let me back up.

18 You're familiar with IIEC's proposal
19 for a one-year fixed price product, are you not?

20 A Yes.

21 Q And if I understand your testimony, it is
22 ComEd's position that you do not have an obligation

1 to provide a fixed price service for the greater than
2 three megawatt customers after the end of the
3 transition period?

4 A That's correct.

5 Q And that is due in part to the expiration
6 of the period that you're obligated to provide
7 service after a service has been declared
8 competitive?

9 A Correct.

10 Q And it's also your testimony that ComEd
11 chooses not to offer a fixed price product post '06?

12 A That's correct.

13 Q And that is a choice ComEd has made?

14 A Yes.

15 Q You would not be precluded from offering a
16 fixed price service however?

17 A No.

18 Q Does this choice not to offer a fixed price
19 service to the large customer group mean that ComEd
20 does not believe that the service is needed by those
21 customers?

22 A It's primarily due to the company's view

1 that those services are available, already available
2 to customers and don't need to be provided by the
3 utility.

4 Q And you remark in your testimony that there
5 are eight or nine providers of service to the large
6 non-residential customers?

7 A Yes.

8 Q You did not, however, identify them by
9 name.

10 I also noticed that you did not
11 identify any particular fixed price service that's
12 available.

13 Are you aware of a particular fixed
14 price service that is available?

15 A In the competitive retail market?

16 Q Yes.

17 A Well, it's my general understanding that
18 customers are getting fixed price contracts from
19 retail suppliers.

20 I know that in 2003 when we made some
21 modifications to our market value rules and we
22 created opportunities for customers to enter into

1 multiple year deals for their CTC to be fixed over
2 multiple years that more than two-thirds of our
3 delivery service customers took advantage of that
4 opportunity.

5 So, yes, I'm aware that there's those
6 types of offers available to customers.

7 Q That was an offer by ComEd to fix the CTC
8 though?

9 A Yes, but if the customer purchased energy
10 from a retail supplier.

11 Q Was it required that the purchase be at a
12 fixed price for a specific period?

13 A No.

14 Q So that doesn't necessarily mean that there
15 was a fixed price product like the one that ICC
16 proposes?

17 A It wasn't required.

18 Q And you have not presented in your
19 testimony any evidence of specific fixed price
20 services that are available to those customers?

21 A No.

22 Q In your testimony, you discuss past

1 switching behavior of large customers in particular.

2 Did you use that as an indication of
3 whether there was a need for a fixed price product?

4 A No. The company, in the context of
5 designing the hourly segment of the auction, we
6 relied primarily on the fact that the service had
7 been declared competitive for those customers.

8 JUDGE WALLACE: You need to keep your voice up.
9 You kind of trail off there. Speak more into
10 microphone.

11 Q You also note that in the past during the
12 transition period, that ComEd's prices on some of
13 those services had been based on very old ratemaking
14 proceedings and are below current market cost.

15 Do you recall that observation?

16 A Could you repeat it again?

17 Q That ComEd's services are priced at levels
18 based on very old ratemaking proceedings.

19 A Yes.

20 Q And are currently below market costs.

21 A Yes.

22 Q In the post '06 environment, those old

1 prices will no longer be available, will they?

2 A That's correct.

3 Q And the fixed price product that IIEC
4 proposes would be based on auction results as
5 proposed by IIEC, correct?

6 A Correct.

7 Q And it would be a component of the ComEd
8 auction process as proposed, correct?

9 A Correct.

10 Q And ComEd takes the position that the
11 auction result would be a market price?

12 A Yes.

13 Q Do you agree with me that customer behavior
14 in the absence of the low market legacy rates and
15 market based rates for all available products might
16 be different?

17 A In the transition period, I think that
18 customers who have left the ComEd service and chosen
19 an alternative from a retail supplier have done so
20 because they've found, for whatever their own reasons
21 are, that those offers were more attractive than the
22 service that they left.

1 So in the transition period, customers
2 that did leave the company's service were subject to
3 a CTC, but basically, that applied whether they took
4 service under the PPO or from a RES. It was the
5 same.

6 That piece of it will be gone, and all
7 that's left is the competitive energy portion of the
8 bill.

9 So I think customers, both during the
10 transition period and after the transition period,
11 the economic decision that they will make will still
12 be based on their ability to find competitive offers
13 on the generation component compared to what the
14 utility is offering.

15 Q And assuming such rational economic
16 behavior, if economic options change, the economic
17 behavior would change, wouldn't it?

18 A Yes.

19 Q You also state that offering a fixed price
20 service might interfere with market development.

21 Do you recall that?

22 A Yes.

1 Q And do you make that supposition, for lack
2 of a better word, because you expect a fixed price
3 offering from ComEd to be more attractive than what
4 would be available from alternative providers?

5 A No.

6 Through the transition period, we
7 basically had a structure where we have annual prices
8 set through the market value which is the PPO price
9 which seems to be the benchmark that customers are
10 comparing their alternative supply offers against,
11 and that's an annual process.

12 And what has occurred is that when
13 markets move after the time that the market value is
14 set, they move up or they move down, and we either
15 have robust competition or diminished competition,
16 and it's, in part, because the utility is creating
17 that alternative regulated price that changes whether
18 or not suppliers can compete.

19 Q I'm at the beginning and I have lots of
20 time left so I'm going to take a chance here and veer
21 a little bit.

22 When you say robust competition, my

1 understanding of robust competition means that it's
2 there and it's effective under a variety of
3 conditions.

4 Is that consistent with your
5 understanding of robust?

6 A My reference to robust was just that in
7 relative orders of magnitude in terms of how many
8 customers leave the utility and choose alternatives
9 in the market versus how many stay with the company.

10 It's quite noticeably different year
11 to year based on --

12 Q So that wasn't a technical robust?

13 A No, that wasn't a technical definition.

14 Q Let's see, where were we.

15 Is it your testimony that the
16 availability of an hourly service alone would satisfy
17 the needs of large customers?

18 A No.

19 Q You are aware that ComEd now offers an
20 hourly service?

21 A Yes.

22 Q And as you testified before, everybody is

1 eligible for that service?

2 A Yes.

3 Q And almost everybody has decided not to
4 take that service?

5 A Most customers do not.

6 Q You also made a statement, and I just want
7 to understand what you mean by it, that large
8 customers, large industrial customers will have
9 different needs in the post 2006 environment than
10 smaller customers.

11 Did you have a particular difference
12 in mind?

13 A The experience that I've had is that large
14 customers, when they're making decisions on their
15 energy needs, their decisions are more complex. They
16 take into consideration a lot of unique objectives
17 that a customer has.

18 So, for example, the willingness to
19 consider self-generation options, demand side
20 management, interruptible rates, the ability to shift
21 operations to take advantage of lower prices, the
22 flexibility of smaller customers to exercise those

1 same choices seems to be dramatically less.

2 Q And that's the sort of thing you meant when
3 you said that it was more likely that the large
4 customers were more likely to have the ability to
5 control load or arrange hedging in the post 2006
6 marketplace?

7 A Yes. That meant they also have usually
8 access to more resources to do the analysis and
9 recommendations on what to implement.

10 Q Now, more likely is a relative measure of
11 likelihood.

12 If I understood your testimony, you're
13 simply saying that they're more likely to be able to
14 do that than the residential customer?

15 A Yes.

16 Q That doesn't necessarily mean that they
17 will be able to do so effectively, does it?

18 A It doesn't necessarily mean that that's
19 going to happen but they do have more -- in my
20 interactions with large customers, they tend to
21 engage consultants more frequently. There's more
22 economic incentive for them to pursue even small

1 opportunities for savings, where in a smaller
2 customer whose energy bill is significantly lower,
3 the total amount of savings isn't often attractive
4 enough to give motivation.

5 Q I grant you that the amount at stake is
6 larger, but in terms of the likelihood, it's entirely
7 possible that I could have a greater opportunity than
8 a residential customer but nonetheless have a fairly
9 negligible opportunity, isn't that possible?

10 A That's possible.

11 Q And have you attempted to quantify the
12 likelihood in any way of a large customer actually
13 being able to effectively cash in the post 2006
14 market?

15 A By hedge you mean to buy directly from the
16 market as opposed to through an alternative supplier?

17 Q By hedge I meant whatever you said when you
18 said arrange hedging.

19 A Oh, okay. I meant purchase fixed price
20 contract from alternative retail suppliers.

21 I'm sorry. Your question was --

22 Q And the question was have you attempted to

1 quantify the probability of being able to do that
2 effectively?

3 A No, other than looking at the existing
4 experience and history of the customers.

5 Q The history based on the transition period?

6 A The transition period.

7 Q Changing subjects; ALM at PJM.

8 When we look at the active load
9 management program at PJM, the CPP-H, the hourly
10 option load that is also qualified for PJM's ALM
11 program, does not require coverage with PJM capacity
12 resources.

13 A A load serving entity has to have capacity
14 plus reserves for all their capacity obligation.

15 However, they can, in terms of their
16 supply resources that they report to PJM in terms of
17 meeting that application, they get credit for
18 capacity that's eligible for ALM credits, so they get
19 a credit for the ALM.

20 Q And your rider CLR is your mechanism for
21 taking some of that and --

22 A Monetizing that credit, yes.

1 Q Rider CLR is your mechanism for taking that
2 credit and passing it down to the end user?

3 A Correct.

4 Q And in your testimony, you state that
5 customers receive full credit for the PJM payments
6 for ALM.

7 A Yes.

8 Q Does that mean that 100 percent of what
9 ComEd will get for PJM goes back to the end user who
10 has the ALM resource?

11 A Yes.

12 Q Now, the cost of capacity that is in the
13 CPP-H rate that a customer has may or may not be
14 exactly equal to the credit that you get from PJM, is
15 that correct?

16 A Under today's PJM construct, there's no way
17 to know for sure whether the capacity cost that the
18 bidders included in their bids is the same as the
19 credit that PJM is giving under today's construct.

20 Under a reliability pricing model,
21 that price becomes visible and transparent, and in
22 that scenario, I would say they are the same.

1 Q But we don't have that yet?

2 A That's correct.

3 Q And we may not have that?

4 A May not.

5 Q Have you attempted to quantify the
6 potential difference between the PJM credit and the
7 cost included in the CPP-H price?

8 A There's no way that I know how to do that
9 analysis because it can't be broken out.

10 Q Okay. Can you tell me when customers
11 identify their load for PJM eligibility or, I'm
12 sorry, participation in the ALM program?

13 A I'm sorry. When do they declare their
14 eligibility?

15 Q No. When they decide they want to
16 participate, what is the process and specifically
17 what is the time frame for notifying PJM?

18 A They would contact ComEd that they want to
19 participate in ComEd's CLR program, and we would
20 enroll them and put them into it.

21 I don't know exactly when ComEd needs
22 to submit that load to PJM, but it would make sense

1 to me that that would occur before the planning cycle
2 that begins each year in June, and that would be at
3 the time that PJM would give ComEd as the
4 load-serving entity the capacity credit for that, and
5 then the payments, I'm not entirely clear on that,
6 whether the payments are 12 monthly capacity payments
7 or one annual payment.

8 But when ComEd receives the payments
9 from PJM, it would flow those benefits back through
10 to the participating customers.

11 Q Okay. Thank you.

12 Change the subject. The auction
13 process and the review process is where I'd like to
14 go next.

15 Your testimony suggests that the staff
16 act as the consumer representative in the auction
17 process.

18 A Yes.

19 Q And you suggested the staff has unique
20 qualifications for undertaking that role?

21 A Yes.

22 Q Are you also aware that staff has unique

1 obligations when it acts in its regulatory capacity?

2 Specifically, are you aware that staff
3 is not allowed to advocate for one interest only;
4 that it must balance the interest of all
5 stakeholders?

6 A I believe that's right.

7 Q So that staff could not, for instance, in
8 the auction process decide to become a protector of
9 the consumer's interest and let the utilities fend
10 for themselves?

11 A That's correct.

12 Q On the other hand, utilities, as Mr. Clark
13 instructed us, have fiduciary obligations to their
14 employees, and they're not required to restrict their
15 advocacy by balancing the shareholders' interests
16 against those of, for instance, the people of the
17 State of Illinois?

18 A That's correct.

19 Q So in the auction process as you've
20 proposed it with participation by a limited number of
21 people, there will be no one in that process acting
22 as an advocate solely for the interest of consumers,

1 isn't that correct?

2 A I think that ComEd's interest is in getting
3 the lowest price from the auctions, and that's also
4 the same interest of consumers.

5 Having a competitive outcome is what
6 staff and their advisors will be focused on. I don't
7 see it as a conflict.

8 Q That wasn't the question.

9 A I'm sorry.

10 Q I won't move to strike it. Let's just ask
11 the question again.

12 There will be no one in that process
13 acting solely on behalf of the interests of the
14 consumers?

15 A No.

16 Q During this process, ComEd will be
17 receiving, under your proposal, ComEd will be
18 receiving some reports during the actual auction that
19 other stakeholders will not be getting?

20 A During the auction?

21 Q Yes.

22 A ComEd would get aggregate supply data and

1 round by round prices. That would be the limit of
2 the information that it obtains.

3 Q And that's independent of any participation
4 by Exelon Generation as a bidder in the process.
5 This is ComEd, the utility.

6 A Right.

7 Q Now, you've also been very specific about
8 what the auction manager will do during this entire
9 process.

10 Will the auction manager act to
11 advance the interests of any particular stakeholder?

12 A No.

13 Q Not ComEd?

14 A No.

15 Q Not consumers?

16 A The auction manager's job is to get a
17 competitive result from the auction. It's not a
18 stakeholder-driven objective other than the interest
19 of all the stakeholders to get the best price.

20 Q Would you expect that there would be any
21 difference in the conduct of the auction manager if
22 the auction manager were retained by the Commission

1 instead of by ComEd?

2 A No.

3 Q If a consumer advocate in this process,
4 which is not in your proposal I grant you, if a
5 consumer advocate executed all appropriate
6 confidentiality agreements and were merely observing
7 the auction process, would you expect the auction
8 manager to conduct the auction any differently?

9 A No.

10 Q Let's turn our attention to the New Jersey
11 auction experience which ComEd has used as a model.

12 I think we can agree that New Jersey
13 has the most experience with the basic auction format
14 that you're proposing here?

15 A Yes.

16 Q And would you expect that New Jersey would
17 be most comfortable with that process of all the
18 potential assessors of that process?

19 A Yes.

20 Q They would be the most comfortable with it?

21 A Yes.

22 Q So I'd like to talk a little bit about what

1 does go on in New Jersey.

2 Notwithstanding that comfort, doesn't
3 New Jersey still conduct an annual review of its
4 auctions?

5 A They do.

6 Q And it is a formal process?

7 A Yes.

8 Q And that annual review includes
9 consideration each year of potential substantial and
10 substantive -- that's the word I was looking for --
11 changes to the process?

12 A They do review the reports and stakeholder
13 input to what they want to change the next time
14 around every year.

15 Q And those changes could be implemented
16 before the next auction?

17 A I think in general, yes. I don't know. It
18 depends on what the change is I suppose.

19 Q And the annual review could also include a
20 broader consideration of alternative procurement
21 strategies, couldn't it?

22 A It could.

1 Q And in New Jersey, there is a showing made
2 each year on the question whether the auction process
3 is still the appropriate procurement mechanism for
4 the following year, is that correct?

5 A I believe so.

6 Q And that determination about the future use
7 of the auction process as to whether we should keep
8 doing this for next year could be affected by changes
9 in the relevant markets for example?

10 A I can't think of a specific example but I
11 think that's possible.

12 Q Well, and it could also be affected by the
13 regulator's assessment of whether the rates produced
14 by the auction process were just and reasonable
15 rates, might it not?

16 A My understanding in New Jersey is that the
17 statute that they have there requires the companies
18 to procure power competitively at retail, meaning
19 that the suppliers that they've selected through
20 their auction process are the retail suppliers for
21 the load.

22 I guess the regulatory review that

1 they go through each year would consider whether
2 there's improvements that could be made to how that's
3 done, but an alternative to not achieve that result
4 would require a change in the law.

5 Q The change in the law which you mentioned
6 would be required if they went through a process that
7 didn't rely on competitive procurement.

8 A Right; full retail power.

9 Q Okay. And, in fact, New Jersey has made
10 changes during its review process to the option
11 process?

12 A They have.

13 Q Under ComEd's proposal, given the criteria
14 you've defined for the review process, could the ICC
15 examine each of those issues in each review
16 proceeding?

17 A Yes.

18 Q But it would not be a formal process?

19 A We've proposed a formal process every three
20 years and every year to have a workshop process which
21 essentially accomplishes the same objective as what
22 they do in New Jersey.

1 So it's a formal process every three
2 years and a workshop process every year.

3 Q I can't avoid asking more questions.

4 The informal process that you're
5 proposing for years one and two, A is a workshop
6 process, not a formal proceeding?

7 A That is correct.

8 Q And there is a significant difference in
9 what is available for potential participants in that
10 process in the way of access to discovery or
11 abilities to take testimony on the road, etc.,
12 correct?

13 A In the workshop but I think the parties --

14 Q And that's what I'm talking about right
15 now, just the workshop.

16 A Yes.

17 Q And, in fact, the Commission would have to
18 make a decision in the absence of a formal proceeding
19 and the kind of record we're developing here on
20 whether it wanted to proceed to a formal proceeding
21 before consumer advocates like the attorney general
22 would ever have the opportunity to question you as

1 we're questioning you today.

2 A My understanding is that even within or
3 outside the workshop process, the parties still
4 retain all their rights to petition.

5 The Commission certainly retains their
6 rights to open investigations and make changes they
7 may see fit, and the parties retain their rights to
8 petition the Commission to open those investigations
9 if the workshop process didn't produce a result that
10 everybody could agree to.

11 Q Well, this morning, Ms. Juracek told us pay
12 no attention to the result no matter how high it
13 goes.

14 That's not a basis for rejecting the
15 auction result?

16 A I wasn't talking about the price. I was
17 talking about the discussions in the auction
18 improvement workshop and what changes wanted to be
19 made.

20 Q Okay. So to meet my objectives here, I
21 would have to file a petition with the Commission
22 asking for a formal proceeding?

1 A If you wanted a formal proceeding outside
2 of the three years, yes.

3 Q But I don't have anybody in the process to
4 watch the process, correct?

5 A But you would be party to the workshops
6 where all the parties would get the same information.

7 Q Which is based on the reports provided by
8 the people who were in the process?

9 A Right. The only information that you
10 wouldn't have is the confidential information that's
11 confidential to preserve the integrity of the
12 auction.

13 Q But I would be relying on the completeness,
14 accuracy, and comprehensiveness of the reports
15 provided by people who were not representing my
16 interest?

17 A I don't know if they represent your
18 interests or not but...

19 Q Answer the question without that -- not
20 representing my interests.

21 I would still be entirely relying on
22 their report?

1 A You'd be relying on the reports of the
2 auction manager and his staff.

3 Q You also suggest in your rebuttal testimony
4 that there might be a need to see a pattern in the
5 performance of the auction process before a change to
6 the auction process might be appropriate.

7 Do you recall that statement?

8 A Not exactly, but I do remember that I said
9 that the formal process would be informed by the
10 experience of the preceding auctions.

11 Q If my numbers are right, let's try Line 744
12 of your rebuttal.

13 A Okay.

14 Q I read that as a suggestion that there is a
15 need for a pattern to develop over time before we
16 would leave it to making changes.

17 Did I misread your testimony?

18 A I think my pattern I'm talking about, as I
19 said, systematic flaws in the process, it doesn't
20 limit us to making improvements with the information
21 we have immediately following each auction.

22 I didn't mean to imply that the only

1 time changes could be made is after each of these
2 three-year cycles.

3 Q That's a good thing, but let's clarify that
4 a little.

5 So if a change were needed and it were
6 a significant or material change in terms of what it
7 did for the customers, that's not something that your
8 proposal would preclude the Commission from making
9 right away?

10 A Right.

11 Q And similarly, if we had one good year of
12 auction performance sandwiched between two bad years,
13 that might not be a pattern but it still might be
14 enough for the Commission to act?

15 A Yes.

16 Q You also talk about the role of the
17 Commission and you describe it as a significant
18 regulatory oversight.

19 It seems to me that most of the
20 Commission oversight that you discussed is before the
21 auction as opposed to after.

22 Is that a correct description?

1 A There's oversight clearly before the
2 auction in all the activities leading up to the
3 actual auction itself, and then there's staff
4 oversight in the auction, and there's staff
5 involvement in the post auction workshop process.

6 Q Okay. Could you detail for me what happens
7 as a part of the regulatory oversight after the
8 auction?

9 A The first part of it is the Commission's
10 consideration, immediate consideration of the results
11 that come out of the auction.

12 So there's an opportunity for the
13 Commission to review the reports of the manager and
14 the staff and their experts and determine whether or
15 not that auction should be allowed to flow through in
16 retail rates.

17 Then --

18 Q Let me stop you there. Let's look at the
19 reports.

20 At the conclusion of the auction, how
21 long do these individuals have to write their
22 reports?

1 A The auction manager's report is due the
2 business day following the close of the auction.

3 Q And similarly, the staff advisor's report
4 is done in the same time frame?

5 A Yes.

6 Q And these are the reports, these are the
7 only reports the Commission will have available to
8 review the auction process and make a determination
9 as to the acceptability of this year's auction?

10 A Yes.

11 Those reports would also detail not
12 only the activities inside the actual auction but the
13 activities leading up to the auction as well.

14 Q Okay. The Commission now has the reports.
15 What does it do?

16 A The Commission would decide whether or not
17 that auction should be accepted, and the company then
18 would file compliance tariffs putting those rates in.

19 Q Okay. What are the criteria by which the
20 Commission will make this decision?

21 A The Commission can make that on any of the
22 responses provided by staff or the manager in their

1 reports and any other information they deem to be
2 necessary.

3 Q No. I understand that's the information
4 they can use.

5 What are the criteria against which
6 they compare this information or assess this
7 information?

8 A Well, we haven't told them what their
9 criteria is.

10 What we've said is that, you know, we
11 want to provide information that talks about whether
12 or not the process was competitive, whether the
13 suppliers followed the rules, was there adequate
14 information flow, was there sufficient promotion in
15 bidder training and all the things that we're
16 proposing in this docket to show the entire process
17 from start to finish.

18 And the Commission would have the
19 ability to review all that information and make its
20 own determination about whether or not the result was
21 the result that we're looking for.

22 Q Okay. I'm paraphrasing. Correct me if I'm

1 wrong. One part says did everybody follow the rules.
2 The other part says did we get the result we were
3 looking for; correct?

4 A Uh-huh.

5 JUDGE WALLACE: Yes or no.

6 A Yes.

7 Q Let's focus on the second part, did we get
8 the result we were looking for.

9 What is that criteria? How do we
10 decide did we get what we were looking for?

11 A The result includes, you know, the
12 competitiveness of the auction, all the information
13 that's provided -- I have it in the exhibit -- what
14 would be included in both of those reports, and
15 that's all part of the result we're looking for.

16 At least those reports are trying to
17 identify the content that would provide meaningful
18 information to the Commission on which to base its
19 decision, and the result does include the price, but
20 it also includes all those other factors as well.

21 Q All right. Again, let's focus on the
22 price.

1 And so I don't have a criteria that
2 says they have to consider these criteria. It's more
3 in the form of the information provided through those
4 reports and what their view of those reports are.

5 Q All right. Let's leave that there.

6 Now, in conjunction with the auction
7 process that we've spent a great deal of time
8 discussing, there's also a ratemaking aspect of this
9 proposal from ComEd, is there not?

10 A There is.

11 Q And that proposal uses the auction results
12 to set the retail rates that customers will pay for
13 both these services?

14 A It does.

15 Q And one of the things I did not hear in the
16 criteria we were attempting to discuss or attempting
17 to define was just and reasonable.

18 Now, is that any part of what you see
19 as the Commission's regulatory oversight in the
20 proposal that you're making?

21 A Yes. The company has an obligation to
22 provide just and reasonable rates. I think that's

1 clear, and the process that we're proposing we
2 believe will produce just and reasonable rates.

3 Q But for the rates to satisfy the Public
4 Utilities Act as you, a non-lawyer, understand it, it
5 would require the Commission to make a finding in
6 this case that the process that you're proposing will
7 produce just and reasonable rates?

8 A Right, subject to also their review after
9 the results are in.

10 Q Okay. Tell me more about that review.

11 A That's the review that we were just
12 discussing.

13 Q And is just and reasonable a part of the
14 post-auction review?

15 A I think in the context of if the auction
16 produced results that are representative of a
17 competitive result in the market and that all of the
18 processes were followed as part of the design, then
19 that would be a just and reasonable price.

20 Q So in your mind, competitive equals just
21 and reasonable?

22 A Yes. A competitive market result is what

1 we're looking for.

2 Q And that's what this process is designed to
3 produce?

4 A Yes.

5 Q One of the benefits that you identify in
6 your testimony for retail customers is the lowest
7 expected market price for the products procured.

8 A Yes.

9 Q And you've just told us about the lowest
10 expected market price, but the products procured,
11 it's a little ambiguous for me.

12 The product that is procured through
13 the auction is a fairly specialized product. It's
14 not your usual blocks of power that are traded in the
15 electric markets generally.

16 A Correct.

17 Q So when you say the lowest expected market
18 price for the products procured, you're talking about
19 a very special product. This does not mean low
20 priced electricity. It says lowest price for the
21 product procured, meaning the vertical tranche
22 auction product.

1 A Right.

2 And by products in that context, what
3 I mean are that ComEd will procure through this
4 auction one, three, and five-year terms an annual
5 product and an hourly product, so those are all
6 differentiated products that we will be procuring.

7 Q Okay. Going back to the ratemaking
8 component of your proposal, the rates that are
9 developed by using what I think is called the prism
10 with the auction results as an input will comprise
11 the generation component of the bundled service
12 rates.

13 A Correct.

14 Q And the delivery component of the bundled
15 service rates is what will be determined by the case
16 that Mr. Clark said will be filed sometime this week?

17 A Correct.

18 Q And that case will not affect the
19 generation portion that will be determined through
20 the auction process?

21 A Only from the standpoint of this is how the
22 pieces will be put together for customers, but other

1 than that, no.

2 Q Okay. In terms of the number, the rate or
3 the price, however you want to state it, that won't
4 be affected by the DST case?

5 A Correct.

6 Q So this is, in effect, the rate case for
7 that portion of bundled service rates?

8 A Yes.

9 Q Now, with respect to the auction process,
10 the other half of your proposal, in terms of
11 procuring power, Commonwealth Edison could institute
12 an auction on its own any time that it wanted under
13 the Public Utilities Act, couldn't it?

14 A Yes.

15 Q The difference between that and this
16 proposal would be that you don't have the ratemaking
17 aspects of your proposal in place if you did that?

18 A Correct.

19 Q And you would also be subject to a prudence
20 investigation if the Commission deemed that necessary
21 to assess the reasonableness of your procurement
22 activities?

1 A Correct.

2 Q I thought I read this but I'm not sure so
3 I'll ask.

4 Without the requested pre-approval of
5 the results and the concomitant exemption from the
6 requirement to prove your process and costs are just
7 and reasonable, would ComEd, nonetheless, want to
8 pursue the auction?

9 A We believe that the auction is the best way
10 for the company to procure its power.

11 If we had to buy power and we didn't
12 have this case, we would still pursue buying our
13 power through an auction. I believe we would do
14 that. It's not solely my decision but I think the
15 company would do that.

16 Q Okay. So just to be clear, if the
17 Commission said, love the auction, not so crazy about
18 the prism, ComEd would still say, you know, the best
19 way to get power is still the auction?

20 A Yes, but I think in your question, you're
21 saying that there's something with the prism that the
22 Commission doesn't approve.

1 Q It doesn't approve the automatic
2 translation of auction results into rates.

3 A Oh.

4 That element we believe is an
5 important component of this proposal because it
6 brings certainty that the power that ComEd enters
7 into contracts for, it's going to get recovery of
8 those costs in order for it to pay suppliers.

9 So we believe in order for it to work
10 well, that element is an essential piece. That's
11 setting aside, if we had no other options, would we
12 still do an auction, but we believe that's an
13 important element.

14 Q I understand it's important. The question
15 is whether it's necessary.

16 A I don't know.

17 Q But in the ratemaking part of this
18 proposal, you do have knowledge that the competition
19 that you're relying on to set retail rates is
20 competition in the wholesale market.

21 A Correct.

22 Q We're going to load caps now.

1 A Okay.

2 Q A very few questions here.

3 Do you know whether anyone at Exelon
4 Generation was consulted on the question of the
5 appropriate percentage load cap for the auction
6 process?

7 A No.

8 Q No, you don't know, or, no, no one was?

9 A No, no one was to my knowledge.

10 Q Okay. Similarly, how about anyone wearing
11 an Ex Gen hat along with another Exelon family hat
12 that we've had a number of witnesses who have had
13 positions in more than one company.

14 A In the workshop process, there was a
15 representative from Exelon Generation that
16 participated in that process, so I was involved in
17 discussions in that forum.

18 Q Okay. And when you made the change between
19 versions of your testimony, what do we call those,
20 stages of your testimony to change the load cap from
21 50 percent to 35 percent, was anyone involved in that
22 process who wears multiple hats?

1 A Only ComEd.

2 Q Okay. Let's discuss this hypothetical
3 situation.

4 If a winning bidder, that is the
5 lowest cost bidder, is constrained by the load cap in
6 an auction, isn't it likely that the clearing price
7 in that auction would be higher?

8 A There's an assumption in the question that
9 I have to disagree with.

10 The bidders in the auction or in any
11 competitive process are not bidding their costs.
12 They're bidding their expectation of their
13 opportunity cost or their view of what their power
14 would be worth in whatever the market opportunity is.

15 The supplier who would be subject to a
16 cap and has potentially more supply than what they're
17 able to sell directly through the auction can sell
18 that energy also into the market including to other
19 potential suppliers.

20 There are rules about what type of
21 contractual arrangements are allowed but it doesn't
22 stop that supply from getting to the market, but it's

1 being traded or it's being valued by the buyers and
2 sellers at the market cost, not the cost of
3 generation but the market opportunity cost.

4 Q If I am a supplier and I am ready, willing,
5 and able to supply 100 tranches and that exceeds the
6 cap and I can only supply 50 tranches and I follow
7 your suggestion and sell it to someone else who then
8 participates in the auction and makes sure that ComEd
9 gets all the power it needs, do you expect someone
10 else to pass the power through without a mark-up for
11 himself?

12 A The other supplier is selling a whole full
13 requirements product, so what they buy from any one
14 cap supplier, they have options in the market for
15 where they buy that from. They could buy it from a
16 cap supplier or any other supplier.

17 So how they put that portfolio
18 together and the competitive forces that the auction
19 brings on that price, you can't follow one particular
20 product and say that that product is sold in the
21 auction for more or less than what they paid for it
22 because it's the whole full requirements product that

1 they're selling in the auction.

2 Q Do you think it's realistic to expect a
3 lower price as a result of that sort of a transaction
4 if I sold to a third party who then combined it with
5 something else and went back to the auction that I
6 was excluded from?

7 MR. FOSCO: Can I ask a clarification?

8 Are you saying lower than that other
9 generator or lower than other participants?

10 MR. REDDICK: Lower -- okay. Let me withdraw
11 the question.

12 Q Assume that I, a supplier, have offered
13 into the auction 100 tranches at price A.

14 Because of the load cap constraint, I
15 do not supply all of the tranches I'm willing to in
16 the auction but I am willing to sell that at price A
17 to anyone else.

18 Someone else buys it at price A,
19 combines it with other products, and makes a
20 submission or bids in the auction at price B.

21 A Uh-huh.

22 Q Is it realistic to expect that price B is

1 going to be less than price A?

2 A Price A being for a product that needs to
3 be assembled with other products in order to meet the
4 full requirements?

5 Q Yes.

6 A My assumption would be that B, because it's
7 a more valuable product, would have a price higher
8 than A. It's a different product and it contains a
9 lot of risk management services and other forms of
10 generation.

11 Q Perhaps I wasn't clear.

12 When I, a supplier, went into the
13 auction at price A with my hundred tranches, those
14 are full requirements tranches.

15 A For A?

16 Q For A.

17 A Okay.

18 Q I am willing to make available that same
19 thing or the component parts to other people because
20 I've maxed out in the auction.

21 A The auction rules would preclude you from
22 offering the product at A to other direct

1 participants in the auction.

2 You may not be precluded from
3 component parts, but the supplier, the other supplier
4 would need to take those components and reconfigure
5 their own portfolio purchase to participate in the
6 auction.

7 Q And wouldn't breaking it apart and putting
8 it back together have costs? You know, simply doing
9 that would have costs as well?

10 A We think the other benefit that the load
11 cap creates --

12 Q Would it?

13 A Well, it could, it could, and the reason is
14 because with the load cap, we think we'll have
15 greater participation in the auction, more
16 competition, and that will affect the price.

17 The competition in the auction,
18 greater levels of competition will drive the price
19 down, so it's not as simple as your question.

20 Q If I am the low cost provider, I'm willing
21 to provide a hundred tranches at a price lower than
22 anybody else and I'm eliminated, you're still telling

1 me we can come back with a second supplier and beat
2 my cost?

3 A In that example, no.

4 Q So if the lowest price supplier of tranches
5 in the auction is eliminated because of a load cap,
6 it's unlikely that the replacement power will come at
7 a lower price.

8 A But the supply that they couldn't sell
9 through the auction because of a load cap would also
10 be sold.

11 If that supplier is willing to sell,
12 in your example, at lower prices than anybody else,
13 that supply would also find its way back into the
14 market including the other participants.

15 Q I have no doubt it would find its way into
16 the market. The question is whether it would find
17 its way into the ComEd auction at a lower price.

18 A It wouldn't be the same product because it
19 wouldn't be the full requirements product.

20 So what's sold to the other
21 participants isn't the same product, so there's no
22 way to make that a side by side comparison of the

1 supply that's coming through supplier B from what
2 supplier A was selling.

3 Q We're comparing the tranches that I'm
4 supplying, the excess that is forbidden from going
5 into the auction by the cap, with the tranches
6 supplied by another supplier. We're not comparing
7 different products. They're all going into the same
8 auction. They have to be the same.

9 A But the rules wouldn't allow that. The
10 rules wouldn't allow you to sell the auction product
11 to another directly competing supplier.

12 Q I understand that.

13 And after you break it apart and
14 reassemble it and another supplier offers it into the
15 auction, are you telling me that he can do that at a
16 lower price than I can?

17 A Yes, because, you know, it's possible
18 because you don't know what the other costs of the
19 remaining portion of the portfolio are.

20 He's putting that product together
21 with purchases he's making from other places in the
22 market, maybe risks he's taking, maybe some purchases

1 from PJM, and you simply don't know what the costs of
2 the remaining portion of the portfolio are, and they
3 could be lower than the original supplier's total
4 cost.

5 Q I'll hold that one, and if I have time
6 we'll come back.

7 ComEd proposes to provide the NITS
8 service instead of having it combined in the auction
9 product?

10 A Correct.

11 Q And you do that as a matter of convenience
12 for the supplier?

13 A The reason we did that is because that
14 keeps the supplier from having to assume the risk
15 that ComEd is going to file at FERC for transmission
16 rate increases and how would they be able to adjust
17 their prices or recover the costs of actions that
18 ComEd would take at FERC on regulated transmission
19 rates.

20 So instead, we'll just procure that
21 directly as a regulated service and flow that
22 through.

1 Q And under ComEd's tariffs...

2 And users pay those costs?

3 A Yes.

4 Q And if ComEd filed a rate case and the
5 transmission rate would have to go up, then end users
6 would pay that as well?

7 A Correct.

8 Q So instead of including this in the package
9 of risk that you want to shift to suppliers, we'd
10 leave this for end users?

11 A It would be with end users in both cases.
12 It would either be in the auction product with
13 whatever risk the suppliers sought compensation for
14 for rate increases that ComEd would undertake or it
15 would be in, as our proposal, a direct pass-through
16 just like distribution.

17 Q But as in our previous example, you can't
18 really break it apart and tell me that it would be
19 less or more in either case.

20 A There's no way to do the analysis.

21 Q So the risk stays with the consumer?

22 A In New Jersey, I believe they have a

1 very --

2 Q Yes or no?

3 A Sorry.

4 Q The risk does stay with the consumer.

5 Under the ComEd tariffs, the risk of a transmission
6 rate increase is on the end user.

7 A Yes, yes.

8 Q Thank you.

9 In a couple of places, you have
10 referred to or quoted from the staff report on the
11 summer workshop process of last year.

12 When you quote from the staff report,
13 do you submit that information as staff statement of
14 a consensus of opinion from the workshops or do you
15 rely on that for the truth of the descriptive
16 information provided?

17 A I think I characterized it as staff's
18 report, staff's findings.

19 MR. REDDICK: Give me 30 seconds, Your Honor.

20 (Pause)

21 Q Just one, one try.

22 Again, the lowest cost supplier who is

1 constrained by the load cap, we cannot say with
2 certainty that the excluded supply will come back to
3 the auction at a greater or lower price, but we can
4 say with certainty that the supply at that price is
5 no longer available to the auction?

6 A Yes.

7 MR. REDDICK: Thank you. That's all I have.

8 JUDGE WALLACE: Thank you.

9 Off the record a minute.

10 (Whereupon an off-the-record
11 discussion transpired at this
12 time.)

13 JUDGE WALLACE: Okay. Back on the record.

14 Mr. Townsend?

15 MR. TOWNSEND: Thank you, Judge. Chris
16 Townsend appearing on behalf of the Coalition of
17 Energy Suppliers.

18 Good afternoon, Mr. McNeil.

19 THE WITNESS: Good afternoon.

20 CROSS-EXAMINATION

21 BY MR. TOWNSEND:

22 Q Would you agree that historically, that is,

1 since the beginning of electric restructuring in
2 Illinois, a combination of ComEd's PPO and its
3 bundled rates has set the price to beat for customers
4 who are eligible for the PPO?

5 A Yes.

6 Q And that's true currently?

7 A Yes.

8 Q That is, customers and RESs view the PPO
9 and bundled rates as a starting point for
10 negotiations, correct?

11 A Yes.

12 Q Would you anticipate that if a RES could
13 not offer a product that was more attractive than the
14 PPO that the customer would take the PPO rather than
15 taking service from a RES?

16 A If the customer was making its decision on
17 price alone. There may be other factors that would
18 drive a customer to decide one way or the other.

19 Q Right, and I didn't mean to limit that to
20 more attractive price.

21 Would you anticipate that if a RES
22 could not offer a product that was more attractive in

1 any way than the bundled rate, then the customer
2 would take the bundled rate rather than taking
3 service from a RES?

4 A In general, yes.

5 Q Because of the role that the PPO has played
6 in the retail electric market throughout the
7 transition period, there's been a significant effort
8 to "get the price right for the PPO," is that
9 correct?

10 A Correct.

11 Q The Commission has attempted to
12 administratively set the PPO at a level that reflects
13 the retail market price for electricity, correct?

14 A Correct.

15 Q Would you agree that has not been an easy
16 process?

17 A Yes.

18 Q And we suffered through the NFF process
19 until 2001, the neutral fact-finder process. Do you
20 remember that?

21 A Yes.

22 Q And was that widely criticized?

1 A Yes.

2 Q On what basis?

3 A Primarily the lack of transparency.

4 Q In 2001, we began operating underneath the
5 MVI.

6 Do you remember that?

7 A Yes.

8 Q And we had a learning curve associated with
9 that?

10 A Yes.

11 Q Can you explain the difficulties that the
12 Commission and Illinois market participants have
13 encountered underneath the MVI?

14 A The primary debate that I'm aware of has
15 been whether or not the formula that's used to take
16 the market price inputs and adjust them to reflect a
17 full requirements retail price accurately capture all
18 the costs of the market value of that product.

19 Q We've had specific problems associated with
20 trying to calculate the MVI and accurately reflect
21 the retail market value, haven't we?

22 A The issue has been an ongoing attempt to

1 try to make sure that the formula is as accurate as
2 possible.

3 Q I'm sorry. Going forward, you're going to
4 try to make sure things get right. Is that what you
5 said?

6 A Right, yes.

7 Q But in the past, we've had a lot of trouble
8 trying to get the price right, haven't we?

9 A Well, I think the company feels that the
10 formula has been the best given the data that was
11 available to it and adjustments that were made.

12 Q But it's evolved over time though?

13 A It's changed, yes.

14 Q And originally, we had difficulty, for
15 example, in developing an off peak number for the
16 MVI?

17 A Correct.

18 Q And ComEd has changed the indices that it's
19 relied upon because some of the indices unexpectedly
20 were not as liquid as anticipated, correct?

21 A Or they went out of business.

22 MS. SATTER: Can I ask where in Mr. McNeil's

1 testimony he discusses the MVI because I don't recall
2 that being part of the testimony, and that would
3 indicate that this is beyond the scope of his
4 testimony.

5 MR. TOWNSEND: This was all given as background
6 to where we are right now, and I don't know if he
7 uses the term MVI, but certainly, a number of the
8 ComEd witnesses talk about the history of the
9 Illinois electric market and how we've gotten to
10 where we are.

11 Certainly Mr. McNeil has played an
12 important role in getting us to where we're at.

13 MS. SATTER: Then I'm going to object to any
14 further questioning along this line.

15 If Mr. McNeil wanted to testify to
16 that in his direct testimony, he could have. This is
17 cross-examination, and it is limited to the scope of
18 the direct.

19 JUDGE WALLACE: The objection is sustained.

20 MR. TOWNSEND: Can I have a moment to search
21 his testimony for the MVI or is that --

22 JUDGE WALLACE: Well, I don't see that going

1 back into the history is doing us any good at this
2 point.

3 MR. TOWNSEND: Okay. Well --

4 JUDGE WALLACE: I think that most of us here
5 know the history. Mr. McNeil probably knows it all
6 too well.

7 Q BY MR. TOWNSEND: Well, we have had issues
8 where we thought that we had a process that was
9 already set and in place, and then, unexpectedly,
10 things have developed that we've had to address spur
11 of the moment, correct?

12 A We have made adjustments over time.

13 Q Including after the Commission has approved
14 a process, and that process was ongoing, we've had to
15 go back and revisit that process even as it was in
16 the process of going on.

17 Let me take you to a specific example.

18 This year in 2005 after we've gone
19 through all of that history, ComEd had to file a
20 tariff revision in order to be able to institute a
21 change in the MVI process, correct?

22 MS. SATTER: I'm going to object to that

1 question as to form. It's unclear who's testifying.

2 Is there a question or is this testimony?

3 I'm going to object as to form.

4 JUDGE WALLACE: I have to sustain it. I don't
5 know where you're going with this.

6 MR. TOWNSEND: One of the issues that we have,
7 Your Honor, is that for the retail market, even after
8 a process is purportedly approved, we can't
9 necessarily be relying on that specific process to go
10 out and try to pre-market a product, and so this is
11 showing the history of what's happened in the
12 Illinois marketplace.

13 That even when you've got a process
14 that's ongoing, that's been approved, that there are
15 tariffs in place, that at that time, it still is
16 potentially subject to change.

17 It goes directly to the issue that
18 we're arguing about, the amount of the enrollment
19 period.

20 So even prior to that enrollment
21 period, we aren't going to be able to pre-market any
22 kind of products based upon the tariffs, or at least

1 that's the theory that we would have is that you
2 couldn't pre-market because those tariffs could
3 change.

4 JUDGE WALLACE: Well, go ahead, but I think
5 that we need to move on to something else quickly.

6 Q BY MR. TOWNSEND: Would you agree that in
7 2005, ComEd, during the snapshot period, had to come
8 into the Commerce Commission and ask for a revision
9 in its tariffs in order to address an unexpected
10 event that occurred during the snapshot period?

11 A I don't remember the specifics about that.

12 Q Is there another witness that might be able
13 to testify about that?

14 A Possibly Paul Crumrine, Larry Alongi.

15 Q Would you agree that under the ComEd
16 proposal, the PPO and the annual product will set the
17 price to be after 2006?

18 A Yes.

19 Q In ComEd's original proposal that was filed
20 in February of this year, ComEd proposed a 30-day
21 enrollment window of the PPO and CPP-A products,
22 correct?

1 A Correct.

2 Q And although components of the ComEd
3 proposal have changed, ComEd continues to advocate a
4 30-day enrollment window, correct?

5 A Correct.

6 Q Would you agree, subject to check, that
7 there are approximately 1,400 customers in the 1 to 3
8 megawatt customer grouping?

9 A That sounds correct.

10 Q And referring to the customers in your
11 surrebuttal testimony at Lines 569 to 570 and 581 to
12 583, can we refer to them as existing bundled service
13 customers?

14 A The customers that are designated by Rate
15 6, 6L, Rate 24, yes.

16 Q In the 1 to 3 megawatt grouping, would you
17 accept, subject to check, that there are
18 approximately 375 of the 1,400 customers that are
19 existing bundled service customers?

20 A Yes.

21 Q ComEd has not specified the date of the
22 auction, has it?

1 A We've suggested the first ten days of
2 September.

3 Q That's one possibility?

4 A Yes.

5 Q Or perhaps sometime in July, correct?

6 A That's not our proposal.

7 Q You've suggested that that is the time that
8 you would accept is sometime in July, is that
9 correct?

10 A We offered July as an attempt to find a
11 time when Ameren and ComEd could run it
12 simultaneously, and that was the logic behind the
13 July proposal.

14 But now that Ameren has agreed to move
15 to September, we believe September is the date that
16 the auction should run.

17 Q Did you or anyone else from ComEd suggest
18 that in your surrebuttal testimony?

19 A I believe we did. I'll check.

20 Q I'd like to make an on-the-record data
21 request for that citation, and if you could provide
22 that back to us, I'd appreciate it.

1 A Okay.

2 Q You address that proposal actually in your
3 rebuttal testimony, correct, the July date?

4 A Yes.

5 Q And there you don't suggest that it's at
6 Ameren's discretion as to whether or not the July
7 date would be appropriate, do you?

8 A No.

9 Q And from ComEd's perspective, there's no
10 technical reason that the auction could not be held
11 in July, correct?

12 A We think there are disadvantages to running
13 it in July.

14 MR. TOWNSEND: Move to strike the answer.

15 JUDGE WALLACE: The answer is stricken.

16 Q BY MR. TOWNSEND: From ComEd's perspective,
17 there is no technical reason that the auction could
18 not be held in July, correct?

19 A No.

20 Q I'm sorry. Is there a technical reason?

21 A No.

22 Q If the auction were to occur in September

1 and if the Commission approves the auction, then you
2 would anticipate that the enrollment window would
3 start on September 15th, is that correct?

4 A Approximately, yes.

5 Q So even if everything goes according to
6 plan right now, we still don't know the exact date,
7 do we?

8 A No, because it depends on the date that the
9 auction concludes and the filing of the tariffs.

10 Q If the Commission during its review process
11 of the auction rejects the auction, would the
12 enrollment window be reset?

13 When would the enrollment window
14 start?

15 A If the auction runs the first time and it's
16 rejected and we have to rerun it?

17 Q Yes.

18 A It would start after the second auction was
19 approved.

20 Q And that still would just be 30 days?

21 A Yes.

22 Q For the second enrollment period. So the

1 one that occurs in 2008, you indicated that you
2 thought that the time frame would begin around
3 March 15th?

4 A Yes.

5 Q And it would end on April 15th, in 30 days?

6 A I remember the March 15th date in my
7 testimony, but it technically would be -- it would
8 start when the company filed its tariffs.

9 Q Which you believe would be March 15th?

10 A I think it would end March 15th.

11 Q Oh, the enrollment period would end
12 March 15th?

13 A I believe if the auction were run in late
14 January, by February 15th, the company would have
15 filed its tariffs, and that would put March 15th at
16 the end of the window.

17 Q Are you familiar with the term DASR?

18 A Yes.

19 Q And does that mean direct access service
20 request?

21 A Yes.

22 Q Have you heard the term used as a verb?

1 A Yes.

2 Q Can you explain?

3 A DASR, when it's used that way, it refers to
4 a supplier submitting a request and DASRing the
5 customer to switch the customer's option.

6 Q Let me just as an aside, do you have
7 experience negotiating retail contracts with
8 customers?

9 A I have in the past, yes.

10 Q How many retail contracts have you
11 negotiated?

12 A Probably 40 to 50.

13 Q And when was that?

14 A Most of them were prior to '97. There's
15 that's been some since then.

16 Q So the retail market looked much different
17 then, didn't it?

18 A In terms of the extra option that customers
19 have.

20 Q It was less complex. Would you agree?

21 A I don't know if I'd agree it's less
22 complex. It's different.

1 Q Less dynamic?

2 A One fewer option.

3 Q Typically, how long would it take for you
4 to negotiate a retail contract?

5 A It depends on the type of contract it was,
6 but a lot of those contracts were for customers
7 considering self-generation options.

8 Those would take longer because it
9 involved a quantitative analysis, the customer's
10 alternative option other than a simple price that
11 they're comparing against.

12 The curtailment contracts, we have a
13 series of those contracts that are negotiated. Those
14 are much quicker.

15 On those contracts, they could be done
16 in a week.

17 Q And for the other contracts?

18 A Anywhere from a month to six months.

19 Q And it would be safe to say that the
20 customers weren't negotiating with multiple
21 suppliers?

22 A That's correct.

1 Well, I take that back. Two
2 suppliers; the supplier of their self-built
3 generation option and us.

4 Q But not multiple suppliers of electricity?

5 A Not right now.

6 Q In ComEd's surrebuttal testimony, ComEd
7 suggested that ComEd would revise the auction
8 products, correct?

9 A Yes.

10 Q And under the original ComEd proposal, all
11 customers with demands between 400 kW and 1 megawatt
12 did not have to make an affirmative election to be
13 placed on the blended product, correct?

14 A Correct.

15 Q They would stay on that product as long as
16 they did nothing, correct?

17 A Correct.

18 Q And under the original proposal, those
19 customers who are placed on the blended product could
20 be DASRed at any time, correct?

21 A Correct.

22 Q And under both the original ComEd proposal

1 and the surrebuttal proposal, the blended product
2 generated prices that lasted for one year, correct?

3 A The blended product changes each year, yes.

4 Q But it lasts for a full year?

5 A Yes.

6 Q And under the original proposal, all
7 customers with demands between 400 kW and 1 megawatt
8 who elected to take the blended product could be
9 DASRed at any time, correct?

10 A Yes.

11 Q Under the surrebuttal proposal, certain
12 customers with demands between 400 kW and 1 megawatt
13 who elect to take the annual product cannot be DASRed
14 at any time, correct?

15 A That's correct.

16 Q And maybe it makes sense for us to turn to
17 Page 29 of your surrebuttal testimony.

18 Do you have a chart there?

19 A I do.

20 Q And what does that chart depict?

21 A This chart attempts to depict what the
22 customer options are during the enrollment window and

1 what the default would be for customers that do not
2 affirmatively take action during the enrollment
3 window.

4 Q Okay. So those customers taking service
5 from RESs as well as those customers taking service
6 underneath the PPO, HEP or ISS who elect the annual
7 product during the enrollment window cannot be DASRed
8 at any time, correct?

9 A That's correct.

10 Q They must remain on the annual product for
11 the full term?

12 A Correct.

13 Q And in the right hand column, you say full
14 annual term, and actually, the first auction, it's
15 going to be a 17-month term under your proposal,
16 correct?

17 A That's correct.

18 Q Would you agree that there are over 4,000
19 customers in ComEd's 400 kW to 1 megawatt customer
20 grouping?

21 A I think that's right.

22 Q Would you agree that approximately 70

1 percent of the customers in ComEd's 400 kW to
2 1 megawatt customer group presently are taking
3 service from RESs or taking services underneath the
4 PPO, HEP, or ISS?

5 A Yes.

6 Q Can we call those customers who are taking
7 service from RESs or taking service underneath the
8 PPO, HEP, or ISS switch customers?

9 A Okay.

10 Q For those switch customers under the
11 surrebuttal proposal, if they want to take service
12 underneath the annual product, they would have to opt
13 into the annual product, is that correct?

14 A That's correct.

15 Q And under the surrebuttal proposal, switch
16 customers would have to do so within the enrollment
17 window, correct?

18 A Yes.

19 Q Under the surrebuttal proposal, would you
20 agree that significantly more customers will have to
21 make a decision during the enrollment window than
22 would have been making that decision under ComEd's

1 original proposal?

2 A Yes.

3 Q As I recall, you said that there were less
4 than 1,400 customers in the 1 to 3 megawatt grouping?

5 A Yes.

6 Q So from the rebuttal proposal to the
7 surrebuttal proposal, we've gone from less than 1,400
8 ComEd customers to over 3,400 ComEd customers being
9 subject to the enrollment window?

10 A I think it's under 3,000; 2,800 using your
11 70 percent number.

12 Q So more than double?

13 A Yes.

14 Q The number of customers being subject to
15 the enrollment window?

16 A For the customers that want to, during that
17 enrollment window, opt into that annual product.

18 Q Customers have to make a decision or not
19 make a decision there within that enrollment window,
20 right, customers that are subject to that enrollment
21 window? And you're talking about over 2,800.

22 A There may be customers with retail

1 suppliers that have multiple year contracts, and I
2 don't know how many of those exist, but the universe
3 of customers is as you say.

4 Q And in ComEd's rebuttal testimony, ComEd
5 agreed to conduct its auction contemporaneous with
6 Ameren, correct?

7 A Correct.

8 Q And Ameren likewise is advocating a 30-day
9 enrollment window, correct?

10 A To my knowledge, that's correct.

11 Q So during these 30 days, everyone in the
12 state who is eligible for an annual product will have
13 to decide whether they're going to take that service?

14 A Other than those that are in multiple year
15 contracts.

16 Q Well, even they have to make a decision
17 because they are eligible to enter in under the
18 enrollment window. They have to make the decision
19 whether they want to renegotiate, don't they?

20 A The multi-year contract I was referring to
21 doesn't give them that out, but if they have that
22 out, they would be required to make that decision in

1 30 days.

2 Q They'd have to decide whether they want to
3 go to the RES to negotiate that out, wouldn't they?

4 A Yes.

5 Q So during those 30 days, you'd imagine that
6 those customers would be calling RESs, right?

7 A And outside the 30 days as well.

8 Q Well, in particular during the 30 days,
9 they've got complete information with regards to
10 price from ComEd, correct?

11 A Correct.

12 Q And they not only would be comparing the
13 prices during those 30 days but they also would be
14 negotiating contracts, correct?

15 A Correct.

16 Q Has ComEd performed any analysis to
17 determine the impact, if any, that a longer
18 enrollment window would have upon the rate charged to
19 customers?

20 A The analysis that is provided in my
21 surrebuttal looks at the price movements that
22 suppliers would face during a longer enrollment

1 window.

2 Q And that's all that you've done?

3 A Yes.

4 Q Did ComEd conducts a customer survey to
5 determine what enrollment window customers would
6 prefer?

7 A No.

8 Q And you're aware that ComEd currently has a
9 75-day enrollment window with its PPO, correct?

10 A Correct.

11 Q And that was approved in 2003?

12 A That was approved in 2003.

13 Q And it's been revised since then, correct?

14 A It's still 75 days.

15 Q It's still 75 days, but the MVI tariff has
16 been revised since 2003, hasn't it?

17 A I don't know what changes you're talking
18 about.

19 Q Well, for example, this year in January,
20 the tariff change that you suggested I talk to
21 Mr. Crumrine about, that occurred since then, and
22 that was a change to the MVI tariff, correct?

1 A Right.

2 Q Has ComEd ever attributed any cost
3 whatsoever to the existing 75-day enrollment window?

4 A We've modified it in terms of megawatts,
5 megawatt shifts that suppliers would face during a
6 75-day window, and that was the purpose for attaching
7 slides to the testimony that talk about during the
8 75-day window.

9 One of the problems with that window
10 from our perspective is that suppliers have used the
11 window to take advantage of market movements to move
12 their portfolios on and off the PPO supply.

13 MR. TOWNSEND: Move to strike the answer as not
14 responsive.

15 JUDGE WALLACE: The answer is stricken.

16 Q BY MR. TOWNSEND: Has ComEd ever
17 specifically attributed any cost whatsoever to the
18 existing 75-day enrollment window that's in the PPO?

19 A No.

20 Q Has ComEd ever used a 30-day window for the
21 PPO?

22 A No.

1 Q What's your definition of experiment?

2 I withdraw the question.

3 Let's walk through a couple of
4 examples on your chart.

5 Well, actually, looking at the chart,
6 if you have a 400 kW to 3 megawatt customer who is on
7 bundled service on 1-1-07, that customer will
8 automatically default to the annual or, as you
9 clarified, 17-month product for the first auction,
10 correct?

11 A Absent any other elective decision, yes.

12 Q And that's what you mean by the word
13 default?

14 A Yes.

15 Q Okay. That's what I meant too.

16 Because the customer didn't
17 affirmatively elect service but rather was placed on
18 it by the utility, the customer can leave the utility
19 service for RES supply with a seven-day DASR notice,
20 correct?

21 A Correct.

22 Q And customers who default to the bundled

1 service in future years will automatically renew each
2 auction term until they choose to go to a RES, the
3 PPO, or hourly service, correct?

4 A Correct.

5 Q If a 400 kW to 3 megawatt customer is on
6 RES, PPO, ISS or HEP service on 1-1-07, is it correct
7 that ComEd views this customer as one who chooses to
8 leave utility service or bundled utility service?

9 A It would be a customer who has exercised a
10 choice other than staying on the default bundled
11 service.

12 Q And accordingly, that customer's choices
13 are either, first, stay with the RES, second,
14 affirmatively elect the PPO, third, affirmatively
15 elect the CPP-A.

16 And both for the second and third
17 options, he had to do that within a 30-day enrollment
18 window?

19 A Correct.

20 Q Or fourth, fall onto an hourly product,
21 correct?

22 A Correct.

1 Q And if the customer chooses either the
2 second or third options, that is, either
3 affirmatively elects the PPO within a 30-day
4 enrollment window or affirmatively elects the CPP-A
5 within the 30-day enrollment window, that customer
6 must remain on that product for the duration of the
7 term?

8 A That's correct.

9 Q For PPO customers, that presents a unique
10 situation for the first auction period, doesn't it?

11 A In the first auction period, the PPO is a
12 12-month term where the annual bundled rate is a
13 17-month term, so in the first time out, those two
14 products have a difference.

15 Q So if a customer elects the PPO in that
16 circumstance, what happens at the end of the 12
17 months?

18 A They can leave.

19 Q And when they can leave, they can first go
20 to a RES, secondly, elect to go onto the CPP-A
21 product, or third, go on the hourly product, is that
22 correct?

1 A Under the company's proposal, the pricing
2 for the PPO and the annual are the same, so the
3 customer would also have the option of just staying
4 on the PPO for the remaining five months which would
5 be the same price as switching from the PPO to the
6 annual.

7 Q And what product would that PPO customer
8 default to?

9 A If they left after 12 months and didn't --

10 Q They didn't leave after 12 months. They
11 didn't do anything at the end of the 12 months. For
12 1-1-07, they've elected to take the PPO. They've run
13 the course of the PPO for 12 months.

14 What then happens to them if they do
15 nothing?

16 A They stay on the PPO.

17 Q The PPO has ended though.

18 A But the first PPO has a 17-month term with
19 the customer having the ability to leave it after 12,
20 so if they do nothing, they stay on the PPO.

21 Q If a 400 kW to 3 megawatt customer
22 underneath the surrebuttal proposal is on bundled

1 service or CPP-A in 2008, if that customer does
2 nothing, what product will that customer default to?

3 A They would default to the next annual
4 bundled rate, the CPP-A rate for the next term.

5 Q And that's true regardless of how that
6 customer got onto bundled service in 2007, correct?

7 A Correct.

8 Q So, for example, if you had a RES customer
9 who's being certified a RES up until 1-1-07 and
10 chooses 4-11-07 to take bundled service and therefore
11 falls into the bottom box on your chart, this annual
12 fixed price CPP-A customer, as of 2008, that customer
13 would default to the annual bundled product?

14 A Correct.

15 Q Let me walk through a couple of examples
16 using hypothetical customers.

17 For example, one, assume that there is
18 an 800 kW commercial customer who is served by a RES
19 on 1-1-07.

20 As of 1-1-07, would you agree that
21 that customer has four choices:

22 First, take service under a RES.

1 Second, take the hourly product from
2 ComEd.

3 Third, affirmatively elect within the
4 30-day enrollment window to take the PPO.

5 Or fourth, affirmatively elect the
6 CPP-A within the 30-day enrollment wind.

7 A I would agree to that except the enrollment
8 window wouldn't be at 1-1-07. It would be earlier
9 than that, but yes, those would be the choices.

10 Q Okay. If that 800 kW commercial customer
11 does not elect the PPO or CPP-A within the enrollment
12 window, that customer could stay with the RES or be
13 served by ComEd on the hourly product until the next
14 auction, correct?

15 A Correct.

16 Q If prior to 1-1-07 that 800 kW commercial
17 customer affirmatively elects within the auction
18 window to take CPP-A, it will be served under CPP-A
19 for 17 months, correct?

20 A Correct.

21 Q And at the end of the 17 months, that
22 customer will again have the same four options,

1 correct?

2 A Yes.

3 Q And at that time, if that 800 kW customer
4 who was previously served by a RES but is at that
5 time taking bundled service does nothing, to what
6 rate will that customer default?

7 A If they were taking bundled service, it
8 would default to the bundled rate, the annual bundled
9 rate.

10 Q Okay. Let's try another example. In this
11 example, we'll have a 2 megawatt customer on Rate 6L
12 and Rider 25, and that customer under the surrebuttal
13 proposal will have four choices as well, correct?

14 A Correct.

15 Q The same four choices?

16 A Yes.

17 Q Except that that customer can default to
18 CPP-A, correct?

19 A Yes.

20 Q And if that customer does nothing, it would
21 default to CPP-A?

22 A Yes.

1 Q And actually, in your chart you don't even
2 have an option to elect CPP-A for such customers
3 because there is no process for them to go about
4 doing that, is that right?

5 A That's correct.

6 Q And that customer then can leave the
7 utility at any time during the 17-month annual
8 blended rate term and be DASRed by a RES?

9 A Yes.

10 Q Am I correct that the switching rules for
11 the CPP-B customer group has not changed from those
12 that were originally proposed in your direct
13 testimony?

14 A That's correct.

15 Q So for a customer less than 400 kW, they
16 will automatically default to the CPP-B blended
17 product, correct?

18 A That's correct.

19 Q No affirmative election is required?

20 A Correct.

21 Q And for that customer who's less than 400
22 kW, they can affirmatively elect to take the CPP-H

1 hourly product, correct?

2 A Yes.

3 Q And they can do that at any time?

4 A Yes.

5 Q And if the customer who is less than 400 kW
6 leaves ComEd for a RES and then returns to ComEd, at
7 some point during the 17 months, they would default
8 to the CPP-B blended product, correct?

9 A Correct.

10 Q At which time that customer must remain on
11 CPP-B for 12 calendar months?

12 A Correct.

13 Q If that less than 400 kW customer leaves
14 ComEd for a RES, then returns to ComEd, they can
15 affirmatively elect the CPP-H hourly product,
16 correct?

17 A Correct.

18 Q And they can do that at any time, correct?

19 No. Strike that.

20 They can't do that at any time, can
21 they, because if they've returned to CPP-B, they
22 can't switch over to the hourly product?

1 A That's correct. They have a 12-month
2 minimum stay.

3 Q But if they return back to ComEd not under
4 the CPP-B but instead under the CPP-H, they can leave
5 for a RES within the seven-day DASR notice?

6 A That's correct.

7 Q And if they've returned to the CPP-H, they
8 likewise could affirmatively elect to take the PPO or
9 the CPP-B for the next auction term?

10 A During the window, yes.

11 Q Can designated agents or general account
12 agents enroll customers onto the PPO MVM under the
13 ComEd proposal?

14 A Yes.

15 Q Under the ComEd proposal, can RESs act as a
16 GAA, a general account agent?

17 A Yes.

18 Q Can designated agents or GAAs enroll
19 customers onto the CPP-A and CPP-B products under the
20 ComEd proposal?

21 A Yes.

22 Q Other than a valid GAA form, will there be

1 any other required paperwork for customers or RESs to
2 prepare?

3 A Not that I'm aware of.

4 I would also direct that question to
5 Paul Crumrine for confirmation.

6 Q What about other non-RES entities; are
7 there other rules relating to them acting as
8 designated agents or general account agents?

9 A Not that I'm aware of.

10 Q Has ComEd begun preparing the material it
11 intends to distribute to customers regarding the way
12 in which their rate options are going to change after
13 the transition period?

14 A No.

15 Q When does ComEd plan to develop that
16 material?

17 A It would have to be developed after this
18 proceeding is over, and the rules on how it's going
19 to work are clear; sometime in the time period
20 between January '06 and September '06.

21 Q Does ComEd have a plan for developing that
22 material?

1 A It's not in my area. There may be somebody
2 developing a communications plan. I'm not involved
3 in that.

4 Q Who from ComEd would know?

5 The reason I say that, Ms. Juracek
6 suggested you'd be the right person. Maybe your job
7 responsibilities are enhanced suddenly.

8 Do you know who would be able to
9 answer that type of question?

10 A I'm just not sure. Our witnesses are
11 working on a communication plan.

12 Paul Crumrine, I'm not sure he's the
13 right guy. I don't know who else from our witnesses
14 is working on the communication plan.

15 MR. TOWNSEND: No further questions.

16 JUDGE WALLACE: Any redirect?

17 MR. ROGERS: No redirect.

18 CROSS-EXAMINATION

19 BY JUDGE WALLACE:

20 Q Mr. McNeil, on Page 10 of your surrebuttal
21 testimony at about Line 207, you make a comment that
22 the wholesale market as we know it today did not even

1 exist prior to the mid to late 1990s.

2 A Correct.

3 Q That isn't quite accurate, is it? We've
4 had a wholesale market for quite some time.

5 A The distinction I was drawing is that FERC
6 has promulgated their rules on wholesale market and
7 the development of RTOs, and all that has happened
8 since 1990.

9 And prior to that, the wholesale
10 market was really a balancing market where utilities
11 bought residual requirements for very small time
12 durations just to cover their actual load.

13 Q Backing up to Page 7, you indicate that you
14 would expect a supplier of product to diversify all
15 of its diversifiable risk.

16 How do you expect a supplier to do
17 that?

18 A The suppliers will diversify their risk by
19 how they assemble their portfolio, so depending on
20 which products they bid on, they would purchase
21 hedges normally in the form of supply contracts if
22 they don't have their own generation of equal term

1 that would provide them a fixed price supply for the
2 portion that they're doing.

3 So that would be how they'd manage
4 their price risk.

5 Their buying risk may be diversified
6 through a series of options to buy and sell power
7 when they have excess or when they're short.

8 Q Now, are any of these items that you just
9 mentioned anything that ComEd has done itself over
10 the last several years?

11 A No.

12 Q None of it?

13 A No.

14 Q Other than bilateral contracts you now have
15 with Exelon?

16 A Correct. These activities all occur today
17 in the affiliate. They don't occur anywhere in
18 ComEd.

19 Q Do any ComEd's affiliates provide any of
20 these services for ComEd or to ComEd?

21 A Only in the product that's being provided.
22 They don't provide the specific services.

1 Q So by Exelon providing power, they may or
2 may not do some of these diversifications that you
3 just mentioned?

4 A That's correct.

5 Q I'm sure Mr. Townsend mentioned this but I
6 might have not heard.

7 On your rebuttal testimony on Page 55,
8 why do you say that going from 30 days to 75
9 increases the probability of inadequate bidding?

10 I'm on your rebuttal at Page 55, Line
11 1190.

12 A The suppliers are likely to view the risk
13 that they would incur when they have to give a fixed
14 price and hold that price open where during that
15 window, customers can elect to take it or if market
16 prices move, they would not take it.

17 So it looks from a supplier
18 perspective like they're being required to offer an
19 option that would only be exercised when it's to the
20 supplier's cost, when it is unfavorable from the
21 supplier's perspective.

22 The point I was making there is that

1 some suppliers will not find that product attractive
2 and may choose not to participate in that particular
3 product.

4 It would not change perhaps their
5 participation in the blended product or other
6 products.

7 Q But they've already made certain attempts
8 to diversify their risk, right? And so you're saying
9 that even if they've diversified by using those other
10 products or items, they would still be leery of these
11 extra days?

12 A This is the one risk that they can't
13 diversify ahead of time. They're exposed during that
14 window, and the difference between 30 and 75 days is
15 an increase in the risk that they're exposed to, and
16 there's no real way for them to diversify that ahead
17 of time.

18 Q There has been some testimony that
19 government agencies need additional time because we
20 can barely order a chair in 45 or 60 days.

21 What about that? What about users
22 that cannot make a decision within 30 days?

1 A We recognize that, I mean, that is the
2 customer side of the issue, so we are trying to
3 balance trying to get the lowest price for the
4 customers with giving them time to make their
5 choices.

6 I think that most of the negotiations
7 that go around a contract are generally on the
8 non-price terms because the price, once that's known,
9 that becomes the deciding factor.

10 So those customers would have an
11 opportunity to negotiate the non-price terms prior to
12 the price being revealed through the auction.

13 Q Okay. And backing up to Page 17 on your
14 rebuttal, Line 339, you say, "The evidence shows that
15 it is essential that the details of the volume
16 reduction formula be kept secret."

17 What evidence are you talking about
18 there?

19 A I'm sorry. Which line?

20 Q 339.

21 A The evidence that I'm talking about here is
22 the criteria that was used to determine...

1 Q Are you talking about Dr. LaCasse's
2 testimony or --

3 A I was referring to when this issue was
4 debated in New Jersey what the criteria was, and the
5 reason for the decision is to keep certain
6 information confidential, and we reviewed that
7 information to understand why information was
8 designated in that fashion.

9 That's the evidence I'm referring to.

10 Q So the New Jersey experience is the only
11 thing you're going by there?

12 A Yes.

13 JUDGE WALLACE: All right. Thank you,
14 Mr. McNeil. You may step down.

15 (Witness excused.)

16 JUDGE WALLACE: Mr. Giordano, you have
17 Childress and Brookover coming tomorrow?

18 MR. GIORDANO: Yes, sir.

19 JUDGE WALLACE: And Mr. Gollomp has a couple
20 fellows coming in from out of town.

21 I don't know if anyone has reached an
22 agreement on who's going first or what have you.

