

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY)
)
)
Proposal to implement a competitive procurement) No. 05-0159
process by establishing Rider CPP, Rider)
PPO-MVM, Rider TS-CPP and revising Rider)
PPO-MI. (Tariffs filed February 25, 2005))

**DRAFT ORDER OF
THE COALITION OF ENERGY SUPPLIERS**

COMPRISED OF:

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

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Customer Focus¹ and Market Reliance.² Significantly, according to the CES, ComEd has revised its procurement proposal to include an improved design of auction products, based not on administrative fiat, but rather on retail customers' experiences during the mandatory transition period. According to the CES, ComEd agreed to another appropriate pro-competitive revision by agreeing to a compromise position of a 50-day enrollment window for its proposed CPP-A product for the initial auction and a 45-day enrollment window for subsequent auctions. Thus, the CES avers, ComEd's procurement proposal, as it presently stands, comports with applicable law and CES' policy standards in the following ways:

- The revised procurement proposal methodology and the proposed translation tariffs are consistent with the Customer Choice and Rate Relief Law of 1997 ("Choice Law" or "1997 Act") and the Public Utilities Act;
- The revised proposal properly maximizes the involvement of the State of Illinois in the wholesale procurement process, as well as in the ultimate setting of retail rates, in contrast to other approaches that would tend to cede more control to the Federal Energy Regulatory Commission ("FERC");
- ComEd's revised design for auction products, default service, customer eligibility and the inclusion of a 50-day enrollment window for the CPP-A product:
 - (i) presents a much improved approach that resolves concerns about the appropriate allocation of the migration risk premium and estimates of volatility under the translation tariff mechanism or "Prism";
 - (ii) better accommodates ongoing customer choice; and
 - (iii) will be attractive to a greater number of competitive suppliers;
- The combination of the wholesale procurement mechanism, the retail translation tariffs and the rules for customer eligibility for service pursuant to the various

¹ Dr. O'Connor explained that the first overriding principle which should guide the Commission in its evaluation of the auction procurement methodology proposed by ComEd is "Customer Focus." (See CES Ex. 4.0 at lines 68-71. All references to CES 4.0 refer to the Revised version filed on _____.) That is, this procurement proceeding must focus on customers more than on the institutional considerations or convenience of ComEd or other non-customer market participants. (*See id.*)

² The "Market Reliance" principle was succinctly enunciated by ComEd's own witness Dr. LaCasse: "Regulation has its place. However, it is generally acknowledged that it is a weaker force than competition in terms of achieving an efficient allocation of resources and prices that track economic realities. If a competitive alternative is available, it should be preferred to achieve these goals." (ComEd Ex. 11.0 at lines 343-46. *See also* CES Ex. 4.0 at lines 71-82.)

auctions as set forth in ComEd's revised proposal generally would be in accord with the obligations of ComEd to those customers whose service has not been declared competitive;

- The revised proposal appropriately recognizes that the Commission has the authority to pre-approve a procurement methodology for utility supply acquisition, and that the purchase of electric power and energy from the wholesale electric market has always been a feature of public utility operation and regulation in Illinois;
- The proposed reverse-auction appropriately would produce wholesale contracts for full-requirements electric service that contain properly recoverable costs permitted under both State and Federal law;
- The revised proposal properly would recognize that the Auction Manager and/or the Commission would have authority to negate the auction results if either determined that proper procedures had not been adhered to or that there was evidence of anomalous or improper bidding practices;
- ComEd's proposed reverse-auction would include provisions to mitigate the impacts of any concentration of generation asset ownership in the region and is designed to comport with the rules of the PJM and MISO systems.
- ComEd's proposal for the initial auction to take place in September 2006, and that of Staff of July 2006, are both reasonable in light of ComEd's other proposed changes, although the original CES proposal for the initial auction to be held in May still has substantial merit, in that it provides a greater amount of time to correct any of problems that may arise.

In short, the CES requested that the Commission adopt the basic form and substance of ComEd's revised procurement proposal, including the revised enrollment window for the CPP-A auction product. With respect to the timing of the initial auction to implement that proposal, the CES stated that, while a September auction date might be reasonable in light of ComEd's other proposed changes, CES' May proposal and Staff's July proposal still have substantial merit, in that they would provide customers with greater flexibility and would allow a greater amount of time to correct any problems that may arise.

Additionally, CES conceded that, while the ultimate resolution of several issues raised by CES in this docket will occur in ComEd's recently filed delivery service tariffs docket (ICC Docket No. 05-0597), the Commission should utilize the instant proceeding to provide proper direction and guidance to ComEd and other Illinois market participants by ensuring that:

- the Supply Administration Charge (“SAC”) is properly designed with an emphasis on cost recovery through a per kWh volumetric charge so as to more accurately relate prices to cost on a customer class basis;
- new customers to the ComEd system are fully eligible to elect delivery services on the first day of service rather than having to take bundled service for the initial month;
- the common area customer classification for service to larger condominium buildings will be properly re-categorized from being residential to commercial, so as to provide greater opportunity for choice for load that is clearly commercial in character;
- uncollectible amounts related to delivery services customers and bundled services customers by class will be accounted for separately;
- a proper recognition of an increased uncollectible expenses rate resulting from CPP-H customers being exposed to wide variability in hourly prices is incorporated in ComEd’s proposed Rate BES-H; and
- a proper recognition and treatment of all direct and indirect costs and related capital expenditures associated with serving CPP-H customers is incorporated in ComEd’s proposed Rate BES-H.

By providing guidance on these significant issues, CES asserted that the Commission can realize an important common goal of the CES and ComEd: bringing additional certainty to the Illinois retail electric market.

II. NEED FOR COMMISSION ACTION

CES Position

According to the CES, as a matter of law and sound public policy, the Commission must approve a market-based post-transition procurement methodology for ComEd. CES averred that the General Assembly appropriately directed the Commission to oversee the development and implementation of the competitive procurement process in Illinois. In the Electric Service Customer Choice and Rate Relief Law of 1997 (the “Choice Law”), the General Assembly established a “mandatory transition period,” during which electric utilities’ bundled rates were subject to a rate freeze, even though the utilities were able to divest themselves of their generation assets. (*See* 220 ILCS 5/16-104, 16-111(g).) The Choice Law also authorized the Commission, at any time and upon its own motion or otherwise, to “investigate the need for, and

to require, the restructuring or unbundling of prices for tariffed services, other than delivery services, offered by an electric utility.” (220 ILCS 5/16-109A.) Thus, according to CES, following the mandatory transition period, the bundled rates of electric utilities may be both “unbundled” and reset. (*See* 220 ILCS 5/16-109A, 111(i).)

The CES also surmised that the General Assembly mandated that the post-transition unbundled rates be set using “the then current or projected revenues, costs, investments and cost of capital directly or indirectly associated with the provision of such tariffed services” (220 ILCS 5/16-111(i).) That is, the Commission was required, according to the CES, to investigate the actual or projected costs the utilities incur in the market to procure generation, and base the utilities’ bundled rates upon those costs, not the utilities’ historic costs.

According to the CES, if the Commission were to ignore the General Assembly’s directives, it likely would result in the Commission having less control over ComEd’s wholesale electricity procurement process, potentially yielding significant authority to the Federal Energy Regulatory Commission (“FERC”).

As recognized by the CES, ComEd’s auction proposal includes Commission pre-approval and oversight of the process and final Commission approval before the wholesale prices resulting from the auction are translated into retail rates. (*See* ComEd Ex. 3.0 at lines 1316-26.) Without a state-approved acquisition methodology, utilities likely would enter into FERC-approved bilateral wholesale contracts (with their affiliates or otherwise). Under the Federal Power Act, wholesale contract transactions generally are considered to be subject to FERC’s regulatory authority. (*See New York v. FERC*, 535 U.S. 1, 18-19, 122 S. Ct. 1012, 1023 (2002) (“the FPA gives FERC jurisdiction over the transmission of electric energy in interstate commerce and . . .

the sale of such energy at wholesale”) (*quoting* 16 U.S.C. § 824(b)). *See also Mississippi Power & Light Co. v. Miss. ex rel. Moore*, 487 U.S. 354, 371, 108 S. Ct. 2428, 2438-39 (1988.)

Commission Analysis and Conclusion

ComEd’s proposed procurement process appropriately provides assurance to the Commission that it will maintain oversight of the Company’s procurement process. As will be discussed in greater detail below, the Commission’s involvement further ensures that the resulting wholesale rates that are produced through the auction process are just and reasonable.

Thus, ComEd’s competitive procurement proposal appropriately incorporates the competitive goals of the General Assembly and provides for Commission pre-approval, oversight and evaluation of the wholesale prices which emanate from the auction prior to the resulting “market values” becoming the costs that Illinois customers bear. Accordingly, we conclude that Commission action is both necessary and appropriate at this time.

III. LEGAL ISSUES

A. Background: the Illinois Electric Service Customer Choice and Rate Relief Law of 1997

CES’ Position

Enactment of the Electric Service Customer Choice and Rate Relief Law of 1997 (the “Choice Law”) in 1997 signaled the beginning of a complex, multi-faceted transformation of the electric industry in Illinois. The scope of this ongoing transformation has affected all stakeholders, including consumers, utilities, alternative retail electric suppliers, governmental agencies, and other interested parties.

The Choice Law has proven to be flexible and durable. Credit is due to the General Assembly for producing a measure to which many parties were able to contribute and support. The General Assembly charged the Commission with three directives regarding competitive

development: (1) to promote competition; (2) to set market-based rates; and (3) to declare rates “competitive.”

The Directive To Promote Competition

The CES averred that, through the Choice Law, the General Assembly provided a clear policy directive to the Commission: “The Illinois Commerce Commission should act to **promote the development of an effectively competitive market** that operates efficiently and is equitable to all consumers.” (220 ILCS 5/16-101(d) (emphasis added).) Thus, according to CES, the General Assembly endorsed the concept that the Commission, in establishing just and reasonable rates, must take affirmative action to ensure the development of an effectively competitive market for retail electricity in Illinois. (*See Clark Tr.* at 182.)

The Directive To Set Market-Based Rates

According to the CES, the Choice Law provides that, in the event that utilities do not own generation and must acquire supply in the wholesale market, the price of the wholesale supply should have a reasonable relationship to the costs indicated by the Commission-approved market value energy charge (“MVEC”) methodology. (*See* 220 ILCS 5/16-111(i). *See also* CES Ex. 1.0 at lines 110-22.) The CES further averred that the Choice Law provides that the MVEC methodology can rely on a variety of inputs, including contracts applicable to the utility’s service areas. (*See* 220 ILCS 5/16-112(a).) According to the CES, the auction proposed by ComEd would yield such energy contracts. (*See* CES Ex. 1.0 at lines 119-22.)

As CES witness Dr. O’Connor explained, a properly designed auction should produce wholesale energy prices that reflect market conditions at the time the auction is conducted and should also help to keep the costs of the utility’s operation of the delivery network free of commodity-related risk and cost. (*See* CES Ex. 1.0 at lines 110-13.) The auction method also

should improve the calculation of the MVEC component of the Power Purchase Option (“PPO”) rates that ComEd must continue to offer after the transition period. (*See id.* at lines 113-19.)

The Ability To Declare “Services Competitive”

According to the CES, one of the most important features of the Choice Law is the section that provides that utilities may petition the Commission to declare “competitive” the utility service to certain customer classes. (*See* 220 ILCS 5/16-113. *See also* CES Ex. 4.0 at lines 743-53.³) The CES noted that the Commission utilized the competitive declaration provision of the Act in ICC Docket No. 02-0479, in which the Commissions issued an Order finding that removed ComEd’s obligation to provide tariffed retail services to those customer classes, because the competitive market has developed to the point that such customers could reliably expect to find comparable and alternative energy service products in the market.

The CES recommended that the Commission reject any proposals (whether explicit or not) to rescind the competitive declaration for the above 3 MW class of customers as being a retreat from the principle of Market Reliance, directly contrary to the Commission’s Order in ICC Docket No. 02-0479, not in keeping with the goals of the Choice Law, and contrary to the facts of the existing Illinois retail electric market. (*See* CES Ex. 4.0 at lines 735-58.)

Commission Analysis and Conclusion

The Choice Law envisions the development of a competitive market for electricity in Illinois, in which each consumer will have choices to determine the most advantageous way to obtain electricity to service the customer’s own needs. (*See* 220 ILCS 5/16-101A(b), (d), (e).) The instant proceeding represents a critical step toward achieving the General Assembly’s goals.

³ Any references to this testimony refer to the Revised CES Ex. 4.0 filed on August 16, 2005.

The Choice Law reflects the General Assembly's belief that Illinois retail electric customers will benefit from competition because competition will lower rates more effectively than regulation. (See ILCS 5/16-101(e)). The goal of restructuring the electric industry is to introduce competition to a formerly noncompetitive, monopolistic market so that consumers will experience the benefits of competition. Only the Commission's continued efforts to foster a competition-enabling environment will provide consumers with meaningful choices and reasonable opportunities to achieve savings from rates derived through a traditional rate of return regulatory process.

D. References to Post-2006 Initiative reports and results

CES' Position

The CES members participated in the Commission's Post-2006 Initiative's Procurement Working Group, and the framework for the CES' views is informed by the members generally subscribing to the efficacy of an auction procurement method. (See CES Ex. 1.0 at lines 61-70.) The results of these workshop discussions indicated that the auction approach, in general, possessed the fullest complement of the desirable procurement characteristics that were identified by the Initiative participants. (See CES Ex. 1.0 at lines 58-61.) That is, none of the other procurement models analyzed by the Procurement Working Group possessed as many of the eighteen desirable attributes as the type of general auction approach proposed in this proceeding. (See CES Ex. 1.0 at lines 64-66.)

Commission Analysis and Conclusion

The topic of the post-transition procurement method was discussed extensively during the Commission's Post-2006 Initiative (the "Initiative") workshops that were held throughout 2004. The Commission is sympathetic to arguments and warnings to protect the workshop process and

the disclosure of specific positions or statements made in workshops. Moreover, the Commission is sympathetic to the calls for the exclusion of other inappropriate disclosures from the records of the instant proceeding as well as other Commission proceedings. Consistent with prior rulings in the instant proceeding, however, and in reaching our decision in this matter, all testimony has been given the weight it merits. That is to say, the Commission has given neither more nor less weight to the Post-2006 references in the record than those materials deserve. The Commission's decision must be based on the record, and any purported consensus that has been contested has been considered and reviewed by the Commission. Accordingly, the Commission notes that its own body, its staff, and the numerous participating stakeholders invested a great deal of time and resources into the working group process, which efforts were rewarded when the parties reached consensus on many items and helped establish a framework the Commission could utilize in addressing post-2006 issues. On the other hand, however, the Commission has before it in the instant proceeding an extensive record consisting of far more than the post-2006 working group reports and, in making its determination in this proceeding regarding the proposed tariffs, the Commission has considered the entire record.

IV. SUFFICIENCY OF COMPETITIVE MARKET

B. Retail market conditions

CES' Position

The CES averred that unrebutted evidence demonstrated that, by year-end 2004, competitive conditions since the inception of the Choice Law in Illinois had yielded roughly \$4 billion in savings for Illinois' residential and non-residential consumers. (*See* ComEd Ex. 1.0 at lines 120-23; *See* CES Ex. 1.0 at lines 804-57.) The CES submitted evidence that residential customers have benefited significantly from rate reductions that, while statutorily mandated,

were predicated on the well-founded belief that competitive wholesale market conditions were such that justified the prescription of savings relative to embedded costs of generation. (*See id.*) According to the CES, commercial, industrial, non-profit, institutional, and governmental customers have benefited from the introduction of competition, by being able to directly participate in the retail electric market, either by contracting with a RES or taking service under the PPO.

According to the CES, the Commission has played an integral role in the development of the Illinois retail electric market. Indeed, CES witness Dr. O'Connor explained that "the Commission's positive and reasonably proactive posture in administering has been the Choice Law." "The most important feature of the Illinois regulatory environment." (CES Ex. 1.0 at lines 689-91.) The CES pointed out that the Choice Law provided considerable flexibility to the Commission to adapt its regulations to market conditions, and the Commission appropriately has exercised its authority to foster competitive market development. Lastly, the CES stated that the Commission generally has chosen a progressive path in decisions regarding competitive market implementation. (*See* CES Ex. 1.0 at lines 692-95.)

The CES requested that the Commission continue to vigilantly address utility practices that appear to inhibit customer choice and to increase unnecessary transaction costs. The CES commended the Commission's leadership as a steadying force in the evolution of the competitive market in Illinois. (*See* CES Ex. 1.0 at lines 711-12.) According to the CES, as a general rule, the Commission's decisions during the transition period have helped to cultivate an atmosphere that enabled market participants, utilities, and competitive suppliers to increasingly focus attention and effort on improving commercial conditions and conducting business, rather than expending resources on contentious regulatory proceedings with uncertain outcomes. (*See* CES

Ex. 1.0 at lines 697-702.) For example, the CES noted the Commission's appropriate ratification of the "Global Settlement" that ComEd, consumer groups, businesses, and RESs negotiated in early 2003. (*See* CES Ex. 1.0 at lines 702-09.) By doing so, the CES stated that the Commission created the necessary conditions for business customers to enter into multi-year retail contracts. These multi-year retail contracts, according to the CES, enabled business customers, for the first time, to hedge their supply and CTCs for the duration of the transition period, thereby ensuring budgetary certainty. (*See* CES Ex. 1.0 at lines 705-09.)

According to the CES, the content of ComEd's filing reflects efforts among many participants to resolve as many matters as possible prior to commencement of the instant proceeding in order to bring greater certainty to the rules governing the market. (*See* CES Ex. 1.0 at lines 715-17.) The Memorandum of Understanding ("MOU") that ComEd entered into with the CES, among others, continued this positive trend. (*See* CES Ex. 1.0 at lines 712-15.) The CES contended that the MOU presented another instance in which market participants sought to provide degrees of freedom and certainty for business customers to hedge their post-2006 supply needs prior to the auction, if conditions so warrant. (*See* ComEd Ex. 1.6; CES Ex. 1.0 at lines 712-15.)

According to the CES, although the end of the mandatory transition period remains more than a year away, the commercial and industrial competitive market in Northern Illinois (*i.e.*, ComEd's service territory) has developed well. (*See* CES Ex. 1.0 at lines 724-42.)

The CES cited four (4) empirical measures that demonstrate the substantial market development in the ComEd service territory.

The **first** empirical measure noted by the CES is the total portion of load that has moved from bundled service to delivery service. The CES stated that the amount and portion of load

switched to delivery services can be analyzed according to various categories, such as PPO load or load served by RESs. (*See* CES Ex. 1.0 at lines 735-55.) In the ComEd service area at year-end 2004, over 21,000 business customers had switched, accounting for almost 52% of all usage by business customers above 15,000 kWh per year. (*See* CES Ex. 1.4.)

Almost one-third of all switched load is served through the PPO statewide. (*See* CES Ex. 1.5.)⁴ According to the CES, the substantial role of the PPO should not cloud the recognition that customers have demonstrated an appetite for making arrangements other than for service under the traditional bundled tariffed rate. The CES averred that choosing to take PPO service is indeed a choice to move from traditional bundled service to a contract-based, market priced product. (*See* CES Ex. 1.0 at lines 766-68.)

The **second** empirical measure of market development cited by the CES is the range of business customers demonstrating an appetite for competitive sourcing and contracting for alternative supply. The competitive market has impacted a broad range of customers. The CES surmised that customers over 1 MW have been especially prepared to consider their energy purchase as a separate matter from delivery. However, the CES averred that this willingness extends to business customers under 1 MW of demand as well. (*See* CES Exhibit 1.4.)

The CES cited switching statistics reported by the Commission in its most recent Annual Report to the General Assembly on the Status of Competition in 2004 that show that, at the end of last year, on an aggregate basis, over three-fifths, 63.3%, of the usage by customers in the

⁴ Put another way, about 9% of total usage by all customers in the combined ComEd and Ameren service areas is served by the PPO while 21% of total load is served by RESs. (*See* CES Ex. 1.0 at lines 758-60.) From another perspective, ComEd Exhibit 7.6 allows for a calculation that 25% of all business load below 1 MW of demand was served under the PPO at the end of 2004 (3,965 GWh / 31,490 GWh) while RESs served 35% (11,117 GWh / 31,490 GWh). (*See id.* at lines 760-64.)

ComEd service area with demands in excess of 1 MW was served through delivery services. (See CES Ex. 1.0 at lines 777-84.) The combined figure for ComEd and Ameren is 56.6%. (See CES Ex. 1.4.)

The CES also presented evidence that the percentage of usage by customers with under 1 MW of demand that has switched to alternative supplies through delivery services is significantly greater than the percentage of the number of such business customers switching.⁵ CES members have expected such a result given their experiences with the restructuring of other network industries; competition does not displace a monopoly all at once. (See CES Ex. 1.0 at lines 797-99.) Dr. O'Connor explained that, on average, larger customers tend to move toward choice sooner than smaller customers in competitive transitions. (See CES Ex. 1.0 at lines 798-99.) According to the CES, it is likely, however, that with the demise of CTCs, especially class-based CTCs for customers below 400 kW, smaller customers will exhibit a growing appetite for choice. (See CES Ex. 1.0 at lines 799-802.)

The **third** empirical measure of market development presented by the CES is the dollar savings that customers have realized through competitive supply sourcing compared to price levels in place under frozen rates. According to the CES, the newly developed market has borne considerable savings for customers. As Dr. O'Connor explained, calculating the realized savings compared to frozen bundled rates necessarily involves some estimation. (See CES Ex. 1.0 at lines 806-13.) However, the data available from the Commission and on the legislated

⁵ Data compiled by the Commission shows that nearly 6% of customers, with less than 1 MW of demand in the ComEd service area served through delivery services, accounted for about 40% of the load of that grouping of customers. (See CES Exhibit 1.4.) In the combined Ameren service areas about 1% of non-small business customers under 1 MW of demand switched, accounting for 10% of load within that group.

mitigation factors provide a sound foundation for the estimate. (See CES Ex. 1.0 at lines 807-08.) Dr. O'Connor concluded that a reasonable estimate based on available data suggests a realized savings of about \$1 billion for business customers in the ComEd and Ameren service territories from the commencement of open access in October 1999 to the end of 2004 and in the succeeding several months. (See CES Ex. 1.0 at lines 804-12.) According to the CES, that averages to a market-wide savings for non-residential customers of about \$15 million per month of open access.

The **fourth** empirical measure of market success relied upon by the CES is the participation in the market by RESs competing against each other. (See CES Ex. 1.0 at lines 741-42.) As of May 31, 2005, the Commission website identified a total of sixteen (16) RESs eligible to serve non-residential customers above 15,000 kWh per year, three of which are certificated solely for the ComEd service territory. (See Illinois Commerce Commission List of Certified Electric Suppliers – ARES, *available at* <http://www.icc.illinois.gov/ec/electricity.aspx>.⁶ Although the CES conceded that a number of RESs would appear to have little or no sales activity, those RESs that have been actively engaged in the Illinois market have built considerable customer support and, on a continuing basis, seek out additional customers. (See CES Ex. 1.0 at lines 861-64.) The CES also cited the reports made public each summer by the Mid-America Interconnected Network (“MAIN”)⁷ as a good indicator of the activity in the

⁶ As of August 30, 2005 the list had grown to a total of eighteen (18) RESs.

⁷ The “Load and Resource Audit” Summer Assessment report to the MAIN Board of Directors provides, among other things, data on the estimated demand served by load serving entities, including RESs within the service areas of each of the Illinois member utilities of MAIN. It is possible to track the general level of market participation by the various RESs through these reports.

market. Information extracted and summarized from the MAIN reports for 2001, 2002, 2003 and 2004 show a significant distribution of load responsibilities for the various RES and ARES over time. (See CES Exhibit 1.7.) Competitive activity among RESs for customer load, according to the CES, is evident. In the ComEd area, from the summer of 2001 through summer 2004, estimated demand increased for all but one of the eight individual RESs shown as load serving entities (“LSE”) scheduling deliveries into ComEd.

In addition, the CES argued that at least two (2) members of the CES are major providers of electric service to residential and small commercial customers in other jurisdictions and currently provide natural gas service to residential and small commercial customers in Illinois.

In conclusion, the CES requested that the Commission take care to preserve choice for commercial and industrial customers while transitioning to a post-2006 procurement process so that all Illinois consumers can directly receive the benefits of competition.

Commission Analysis and Conclusion

The Commission concludes that the record evidence overwhelmingly demonstrates that many aspects of the Illinois retail electric market are working very well and already are delivering benefits to consumers. The Commission will utilize this evidence as it considers the issues before us in the instant proceeding.

V. AUCTION DESIGN ISSUES

E. Date of initial auction

ComEd’s Position

ComEd proposed the month of September 2006 as the appropriate timeframe for the initial auction, citing two reasons for its proposal. First, according to ComEd, September 2006

would provide a sufficient amount of time for the Auction Manager to accomplish all of the tasks that must be undertaken prior to the auction. Second, ComEd stated that September 2006 would be relatively near to the delivery date of January 2007 for the power purchased in the auction and, therefore, would result in a more accurate price. (See ComEd Exhibit 3.0, p.33, lines 709-715.) Also, ComEd stated that a September date provided adequate lead time for customers to make decisions about alternative supply options.

CES' Position/CCG's Position

Other parties recommended May 2006 as the initial auction date. In support of a May 2006 date, the CES reasoned that an auction scheduled for May 2006 could be delayed, if necessary, until September 2006 to allow time for the Auction Manager to address problems that may arise. (See CES Exhibit 1.0 at lines 223-226; CES Exhibit 2.0, p. 4, line 56) The CES also stated that an earlier auction date would allow customers under 1 MW additional time to evaluate their supply options. (CES Exhibit 1.0 at lines 209-211) As CES witness Dr. O'Connor explained, conducting the auction prior to September would increase "flexibility and options for the Commission, for regulators and policymakers and, most importantly, for customers." (CES Ex. 1.0 at lines 203-05.) Accordingly, the CES argued that an initial auction date in May or July 2006 would be appropriate.

The CES stated that none of the "technical" reasons presented to justify a delayed initial auction date are persuasive. In addition, the CES presented evidence that the experiences in other states demonstrated that it is unnecessary to hold the initial auction in September to provide sufficient time for the Auction Manager to set up the process, advertise to potential suppliers, or provide training to suppliers. (See ComEd Ex. 3.0 at lines 732-36; Clark Tr. at 185-86.) In

addition, the CES contended that the New Jersey process timeline suggested that these activities could be accomplished in about three months. (*See* CES Ex. 2.0 at lines 123-33.)

Thus, the CES concluded that, assuming that the Commission entered a Final Order in the instant docket in or about January 2006, scheduling the initial auction for May or July would afford the Auction Manager sufficient time to set up the process, to advertise to potential suppliers, and to provide training to suppliers.

The CES also presented evidence that compared historic wholesale electricity prices and which, according to the CES, demonstrated that ComEd's assumption that a September auction would be more "accurate" than an earlier auction was not always correct. (*See* CES Ex. 2.0 at lines 138-41.) The CES' comparison revealed market prices in May as "accurate" as the market prices in September for the upcoming calendar year. (*See* CES Ex. 2.0 at lines 140-41.) The CES reviewed forward On-Peak prices for the upcoming calendar year 2005 (Cal 05 On-Peak) that were available during the months of May and September of 2004, for 50 MW blocks of firm energy for delivery to NiHub, a PJM trading point in ComEd's service territory in Northern Illinois. (*See* CES Ex. 2.0 at lines 146-49.) The CES compared the prices observed during the month of May and the prices observed during the month of September with the last available prices for Cal 05 On-Peak on December 29, 2004. The December 29th price of \$47.95/MWh, the average of the prices observed during May (\$45.02/MWh) was slightly more accurate than the average of the September prices (\$44.80/MWh). (*See* CES Ex. 2.0 at lines 158-64.) Since December 29 is only two days from the delivery period (and closer to the delivery period than May and September), and if ComEd's assumption were correct, the CES contended that they should have observed that the September prices, rather than the May prices, were closer to the December 29th prices. Instead, the study yielded the opposite conclusion.

Since no party presented any evidence in response to this data and given the tangible benefits associated with an earlier auction date, the CES recommended that the Commission direct ComEd to conduct the initial auction in May or July 2006.

Dr. O'Connor explained that customers should be the main focus of this proceeding; and Illinois public policy treats the opportunity to exercise choice as a key element in benefiting customers. (*See* CES Ex. 1.0 at lines 207-14.) That being the case, the CES averred that a May or July 2006 date for the initial auction would provide additional time for customers -- particularly those below 1 MW of demand -- to assess their options prior to the end of the mandatory transition period on January 1, 2007. According to the CES, a May or July 2006 auction date would be consistent with promoting opportunities for customer choice.

Holding the initial auction prior to September 2006 would provide auction participants, the Commission, and the Auction Manager the benefit of additional time to make corrections or adjustments in the event of problems that impact either or both the ComEd and the Ameren auctions. (*See* CES Ex. 1.0 at lines 216-25; CES Ex. 2.0 at lines 77-95.) Although the auction approach that is proposed in this proceeding has been vetted in New Jersey and, therefore, within the PJM Interconnection, LLC ("PJM"), Dr. O'Connor explained that the application of this approach to a new region within PJM could involve any number of risks that may not have been anticipated. (*See* CES Ex. 1.0 at lines 216-23.)

Furthermore, as explained by CES witnesses Bollinger and Bohorquez, the success of initial auctions in Illinois may be affected by the membership of ComEd and Ameren in two different Regional Transmission Organizations ("RTOs"). (*See* CES Ex. 2.0 at lines 86-91.) PJM, the RTO to which ComEd belongs, has had considerable experience in accommodating the New Jersey auctions and also has shown a willingness and ability to accommodate decisions by

states to provide for open access at the retail level. The Midwest Independent System Operator (“MISO”), the RTO to which Ameren belongs, however, has not had experience with auctions and has not yet fully accommodated those states, such as Illinois, that have chosen to permit open access at retail.

The CES noted that the Commission should approve an auction timetable that grants the MISO adequate time to reasonably assess and resolve with PJM any issues regarding the auction. According to the CES, a May or July auction date likely would require MISO to address any issues sooner, rather than later, in 2006. A September auction would allow MISO to delay addressing any auction issues with PJM until well into 2006.

Furthermore, the CES stated that these potential risks are heightened in downstate Illinois where Ameren has recently begun operating under the MISO with no previous auction experience. Consequently, the date of the initial auction should allow sufficient time to make corrections given that it has not been tested in PJM’s Northern Illinois Region or in MISO. According to the CES, a May 2006 initial auction date would allow for the auction to be delayed to September if suppliers, customers, RTOs, processes and/or systems are not ready in May or if the Commission or auction manager decides that there are potential problems in the May bidding process that require delay.

As Dr. O’Connor explained, “deadlines work.” (CES Ex. 1.0 at line 227.) By setting a May 2006 initial auction date, the Commission would encourage a time frame that will require all parties to define the post-transition rules of the game, thus bringing more certainty to the environment for customer decision-making. (*See id.* at lines 227-31.) According to the CES, this would be consistent with the goal of the MOU that ComEd has entered into with the CES and others. (*See* CES Ex. 1.0 at lines 231-32.) As ComEd witness Clark explained, a lack of

certainty increases risk, thereby increasing costs and, ultimately, the price that is charged to consumers. (Tr. at 184-85.) As he concluded, "certainty in all the markets [retail and wholesale] is a very good thing . . ." (Tr. at 185.)

CCG's Position

Michael D. Smith, testifying on behalf of Constellation Energy Commodities Group ("CCG"), a potential bidder in the auction, stated that May 2006 would allow sufficient time for winning bidders to hedge their positions prior to the delivery date of January 2007. (CCG Exhibit 1.0, pp. 4-5, lines 119-133.)

Staff's Position

Staff originally recommended July 2006 as the date for the initial auction. As rationale, Staff argued that, since the 2006 auctions would be the first of their kind in Illinois, prudence dictated that an adequate amount of preparation could occur before the auction takes place. When compared to May 2006, Staff noted that a July 2006 date would provide two additional months of preparation time. As a point of comparison, Staff witness Schlaf pointed out that the first two New Jersey auctions were held nearly six months prior to the delivery dates for those auctions. Only later, as more auction experience was gained, did the gap between auction date and delivery date narrow to less than four months. (ICC Staff Exhibit 5.0, pp. 21-22, lines 497-499.)

ComEd's Response

In rebuttal testimony, ComEd witness McNeil stated that Ameren and ComEd had agreed to hold the initial auctions during the first ten days of September 2006 as the timeframe for the initial auction. (McNeil Reb., ComEd Ex. 10.0, 26:545-28:581.) In the alternative, Mr. McNeil stated that ComEd would prefer July 2006, but only if there were a determination that

prospective bidders' participation would not be affected by holding the auction in that month. (ComEd Exhibit 10.0. p. 28, lines 579-581).

The Parties' Response to the ComEd/Ameren Agreement

CCG witness Smith was the only prospective bidder to respond to the September 2006 proposal. While still preferring the May 2006 date, he stated that CCG would not object to simultaneous September auctions and that the September date would not affect CCG's desire to participate in the auctions. (CCG Exhibit. 2.0, p. 2, lines 35-43.) Staff emphasized the need for a joint auction that would procure supply for the customers of ComEd and Ameren at one time. (Salant Dir., ICC Staff Ex. 1.0, 7:157-160.) A joint auction, which was also favored by ComEd and Ameren, required that a common date be selected. The Staff supports this agreement and concurs with the decision to conduct the first auctions at that time. (Salant Reb., ICC Staff Ex. 11.0, 12:263-14:304.)

[NOTE: The CES has explained in its initial brief that while it believes that there is substantial merit to holding the auction well before September 2006, given ComEd's revisions to other portions of its proposal, it may be reasonable for the Commission to include that the initial auction should be held in September 2006. For the Commission's convenience, the CES has set forth language for each alternative below.]

Commission Analysis and Conclusion – Alternative 1 – July 2006

The Commission agrees with Staff, ComEd, Ameren, and other intervenors about the importance of contemporaneous auctions to procure supply for commodity customers of both ComEd and Ameren. The Commission recognizes that this requires the selection of a common date for the initial auction.

The Commission further agrees with the CES that unnecessary delay in conducting the initial auction would come at the expense of providing customers and policymakers additional flexibility. Holding the initial auction sooner, rather than later, will provide additional time to address problems and make necessary corrections or adjustments following the auction and prior to the new rates taking effect.

Accordingly, the Commission orders ComEd to conduct its initial auctions, in tandem with Ameren's. The Commission is of the opinion that a July 2006 initial auction will provide the Auction Manager with a sufficient amount of time following the Commission's order in this proceeding to complete the tasks that must be completed prior to the auction, such as the testing of and practice with software and supplier training and will also provide other market participants with a greater amount of time to make decisions regarding their Post-2006 supply options.

Commission Analysis and Conclusion – Alternative 2 – September 2006

The Commission agrees with Staff, ComEd, Ameren, and other intervenors about the importance for a joint auction that would procure supply for commodity customers of both ComEd and Ameren. The Commission also agrees that this requires the selection of a common date.

The Commission further agrees that the initial auction's success is critical to the development of the market and that the auction, therefore, should be launched with the least amount of uncertainty. Unknown risks and issues resulting from inexperience could impact the success of the initial auction; therefore, additional time possibly could help to minimize these potential risks. In addition, we recognize the importance of completing the pending delivery

services tariffs proceeding prior to the initial auctions so that all market participants have a greater degree of certainty regarding the impending changes in the market.

Accordingly, the Commission orders ComEd to conduct its initial auctions in tandem with Ameren's. The Commission is of the opinion that a September 2006 initial auction will provide the Auction Manager with a sufficient amount of time following the Commission's order in this proceeding to complete the tasks that must be completed prior to the auction, such as the testing of and practice with software and supplier training and will also provide all market participants with a higher degree of certainty regarding all related issues and changes in the marketplace.

G. Common vs. Parallel auction

3. Between ComEd and Ameren products

ComEd and Ameren originally proposed to conduct their respective auctions separately but in parallel.

Staff's Position

Staff witness Salant urged the Commission to approve auction rules that provide for switching between the fixed price products of ComEd and Ameren. (Salant Dir., ICC Staff Ex. 1.0, 27:615.47:1058). Staff witness Ogur pointed out that even small benefits to switching would still be benefits, and the Company had pointed to no costs to using a common Ameren/ComEd auction. (ICC Staff Exhibit 4.0, pp. 4-8) Staff witness Ogur also showed "how switching is a viable strategy for a bidder with physical resources in any RTO and how switching can lead to efficiency gains, even during the period when seams between MISO and PJM still exist." (ICC Staff Exhibit 4.0, pp. 8-20; quote at pp. 19-20, lines 436-439)

ComEd's Response

ComEd agreed and proposed in Mr. McNeil's testimony that the auction provide for switching between ComEd and Ameren fixed price products. (McNeil Reb., ComEd Ex. 10.0, 28:583.30:616). ComEd also proposed that switching be permitted between the hourly products of ComEd and the hourly products of Ameren.

CES Position

The CES did not object to a joint or parallel ComEd auction with Ameren. However, the CES reminded the Commission that the desire for perfect congruence in auction products between ComEd and Ameren should not come at the expense of interfering with the market's role in allocating migration risk premiums.

The CES contended that, ideally, to facilitate suppliers' ability to switch between the ComEd and Ameren auctions, symmetry should be attained between characteristics of the customer population to be served under the annual and blended products throughout the state. (See CES Ex. 4.0 at lines 491-95.) With this objective in mind, the CES argued that customers who exhibit a similar propensity to switch should be grouped together. In the instant proceeding, a particular issue arose regarding the way in which customers in the Company's 400 kW to 1 MW customer grouping should be treated. According to the CES, ComEd appropriately grouped those customers with other eligible customers with demands greater than 1 MW in its annual auction product. (See ComEd Ex. 18.0 at lines 558-68.) Ameren balked at this combination, and based its customers groupings solely upon the historic switching levels of these customers. (See ICC Docket No. 05-0160(c), Ameren Ex. 18 at lines 526-69.)

Because the 400 kW to 1 MW customers in ComEd have demonstrated a propensity to migrate that is more akin to that of the 1-3 MW customers in ComEd, the CES averred that such

similarly-situated customers should be grouped together. (*See* CES Ex. 4.0 at lines 535-40.) Likewise, the CES averred, customers with demands greater than 1 MWs in the Ameren service territory should be grouped with ComEd customers with similar demand. (*See* CES Ex. 4.0 at lines 654-662.) However, the record evidence, according to the CES, supported the Commission's use of discretion to either include or exclude the 400 kW to 1 MW customers in the Ameren service territory.

In the post-mandatory transition period world, given proper auction products and tariff terms and conditions, the CES contended that competition likely will develop in the Ameren service areas to a degree similar to that which already has developed in the ComEd service area. (*See* CES Ex. 4.0 at lines 475-78.) The CES explained that the end of the transition period should be the end of institutional obstacles, intended or inadvertent, that frustrate customer choice in the Ameren service territories. The CES further noted its confidence that continued Commission oversight and intervention (if necessary), would foster switching levels in the Ameren service territories similar to ComEd. (*See* CES Ex. 4.0 at lines 478-82.) Accordingly, the CES argued that all 400 kW to 1 MW customers should be grouped together. Indeed, according to the CES, it would be improper for the Commission to build incentives into the auction process for ComEd's rates that displaced products easily attainable in the competitive retail market.

The CES submitted data that shows that the 400 kW to 1 MW customers in the Ameren service territory would represent an insignificant amount of load in a combined auction. (*See* CES Ex. 4.0 at lines 504-07.) These customers represented **a mere 3% of the total load** that would be included in a combined blended product auction if ComEd's 400 kW to 1 MW customers were extracted from the blended product auction and served through a one-year

auction product.⁸ According to the CES, this relatively insignificant load for Ameren customers between 400 kW and 1 MW should not be determinative of whether to group together all customers with demands greater than 400 kW.

The CES presented data that at the end of calendar year 2004, the proportion of switched load for the 400 kW to 1 MW customers in the ComEd service territory was nearly three times that of switched load among the 400 kW to 1 MW customers in the Ameren service territories. (See CES Ex. 4.0 at lines 512-15.) In the ComEd service territory, 63% of all load in the 400 kW to 1 MW group was on RES, PPO and ISS service, while the rate in the Ameren service territories for this sized customer was shy of 23%. (See *id.* at lines 515-17.) The CES pointed out that differences between the 400 kW to 1 MW customer groupings in the Ameren and ComEd service territories with respect to implications for Prism allocations were even more striking because under the proposals of ComEd and Ameren, the Prism would give only a 50% weighting to PPO load. (See *id.* at lines 520-23.) In Ameren, almost 23% of total load for the 400 kW to 1 MW customers was on delivery services at the end of 2004, with more than three fourths (78%) of that on the PPO, 11.6% on RES direct service, and 10.3% on ISS. (See *id.* at lines 524-26.) In contrast, in the ComEd service territory, nearly 63% of total load for that same grouping was on delivery service, with less than one third (32.3%) on PPO, two thirds on RES service, and about 1% on ISS. (See *id.* at lines 526-29.)

To summarize the CES' data, the 400 kW to 1 MW customer group in the ComEd service territory have demonstrated greater total switching activity than even the 1-3 MW customer

⁸ That is, the 400 kW to 1 MW customer load in the Ameren service territory would account for only 2,000 GWh annually in a combined blended annual auction load of 65,600 GWh. (See CES Ex. 4.0 at lines 504-06.)

group in the ComEd service territory and considerably more than that for all Ameren customers over 1 MW.

Therefore, according to the CES, it is entirely appropriate to include those ComEd customers in the CPP-A auction. Although it is likely that the 400 kW to 1 MW customers in the Ameren service territory will experience similar switching levels following the transition period, their inclusion in the Ameren equivalent of the CPP-A auction should not be determinative of the make-up of the ComEd products. (*See* CES Ex. 4.0 at lines 580-91.)

Commission Analysis and Conclusion

The Commission agrees with Staff and approves the proposal to combine ComEd products with Ameren products, to the extent described above, in order to conduct two common auctions in parallel with each other: (1) a fixed price product auction consisting of several fixed price products; and (2) an hourly product auction consisting of two hourly products.

I. Fixed Price Auction Product and Tariffed Services for Larger Customers

CES Position

In its surrebuttal testimony, ComEd set forth a revised structure for the customer groupings. (*See, e.g.*, ComEd Ex. 18.0 at lines 553-68.) Responding to recommendations made by the CES' witnesses, among others, ComEd's surrebuttal proposal appropriately recommended that the CPP-A customer grouping include eligible customers in both Large Load Customer class (400 kW – 1 MW) and the Very Large Load Customer class (1 - 3 MW). That is, each year during an enrollment window, eligible customers with demands over 400 kW would be offered an annual, fixed price product that would be based upon ComEd's CPP-A auction. (*See* ComEd Ex. 18.0 at lines 558-68.) That annual product would be the automatic default product for those customers who were on bundled service at the end of the transition period or who selected the

annual product the year before. (See ComEd Ex. 18.0 at lines 558-74.) The CES requested that the Commission accept ComEd’s revised proposal and extend the duration of the enrollment window to 50 days for the initial auction and 45 days for subsequent auctions, but otherwise approve the customer grouping proposal set forth by ComEd in its surrebuttal testimony.

1. Nature of Auction Product and Tariffed Services for 1-3 MW Customers

ComEd’s Initial Proposal

ComEd initially proposed to procure a full-requirements annual, single fixed-price product (i.e., prices would be set for the length of the supply period) for customers with a peak demand greater than 1 MW but less than 3 MW (these are referred to as the “Very Large Customer Class” that would be served by “CPP-A” auction products). ComEd reasoned that an annual product would be appropriate for larger customers because of their relative sophistication in choosing supply options. Moreover, ComEd stated that annual prices would provide price stability but would also be reflective of market prices. According to ComEd, short-term market prices are the appropriate prices to charge larger customers since such customers can control their loads and obtain hedging products from the market. (ComEd Exhibit 3.0, p. 27, lines 557-561.)

BOMA’s Position

The BOMA was the only party to oppose ComEd’s proposal to offer an annual product to CPP-A customers. (BOMA Exhibit 1.0, p. 25, lines 532-534.) BOMA witnesses Brookover and Childress argued that customers of this size should be included in the CPP-B auction which, under ComEd’s initial proposal, applied to customers with a demand under 1 MW and blended multi-year contracts with annual contracts. According to Mr. Brookover and Mr. Childress, even though the CPP-B auction would produce prices that are more volatile than the bundled rates

currently applicable to large customers, CPP-B prices would be less volatile than the CPP-A prices and, for this reason, was preferred. Further, the BOMA stated that an additional advantage of eligibility for the CPP-B auction was that CPP-B customers would not be subject to an enrollment window. That is, CPP-B customers could choose to leave CPP-B service at any time (although they would be obligated to remain on CPP-B service until the end of the supply term should they return to ComEd generation service). Finally, the BOMA averred that the inclusion of larger customers in the CPP-B auction would not be anticompetitive, since customers in the 1 MW to 3 MW group would seek multi-year contracts in an effort to avoid CPP-B annual price changes. (BOMA Exhibit 4.0, pp. 17-18, lines 378-389)

CES Proposal

In contrast to the BOMA, which wished to enlarge the CPP-B group to include 1 MW to 3 MW customers, the CES proposed to reduce the size of the customer group eligible for the CPP-B product. The CES proposed that customers in the 400 kW to 1 MW demand range would be offered an annual product similar to the CPP-A service, except that customers in the 400 kW to 1 MW demand grouping would be subject to the same switching rules as the CPP-B customers. (CES Exhibit 4.0, pp. 10-11, lines 241-248) The primary justification for this proposal, according to the CES, is that the switching propensity for 400 kW to 1 MW customers is much more similar to customers in the 1 to 3 MW customer group than it is for customers with a demand under 400 kW. (CES Exhibit 1.0, p. 13, lines 314-316) Another advantage, as CES witness O'Connor explained, was the reduction of any risk premiums that suppliers providing bids for the CPP-B product might add to their bids.

Switching data presented in CES witness O'Connor's rebuttal testimony indicated that customers in the 400 kW to 1 MW demand grouping currently exhibit switching characteristics

that are very similar to — in fact almost indistinguishable from — customers with peak demands greater than 1 MW but less than 3 MW. This data indicated that 42.2% of customer load in the 400 kW to 1 MW class has switched to RES service, compared to 42.4% of customer load in the 1 to 3 MW customer grouping. Additionally, 20.3% of load in the 400 kW to 1 MW demand class has switched to PPO service, compared to 28.0% of customer load for customers in the 1 to 3 MW range. Altogether, then, 62.5% of customer load between 400 kW to 1 MW and 70.4% of customer load between 1 MW and 3 MW has switched away from ComEd generation service. (CES Exhibit 4.0, Table 4A, p. 26, lines 556-559) In contrast, only 37% of non-residential customer load less than 400 kW has switched from ComEd generation service. (CES Exhibit 1.0, p. 16, lines 338-340, citing ComEd Exhibit 7.6) Not only does the inclusion of 400 kW to 1 MW customers in the CPP-A segment, rather than the CPP-B segment, provide a logical and reasonable grouping based on statistical switching propensities, but, according to the CES, such a grouping also eliminated the need to utilize a migration risk allocation mechanism in the rate translation mechanism (or rate prism) for the remainder of the mass market customers in the blended product (i.e., less than 400 KW). (ComEd Exhibit 18.0, p. 20, lines 435-449)

ComEd's Surrebuttal Proposal

ComEd responded to the CES proposal by agreeing to group the 400 kW to 1 MW customers with other CPP-A customers. (ComEd Exhibit 18.0, pp. 25-26, lines 556-565) However, in contrast to the CES proposal, ComEd proposed that switching rules applicable to the 400 kW to 1 MW customers would be the same as those applicable to other CPP-A customers.

Staff's Position

Staff did not oppose ComEd's surrebuttal proposal to set the range for the CPP-A class between 400 kW and 3 MW.

Commission Analysis and Conclusion

The Commission is persuaded by the CES' testimony and supporting data. ComEd's surrebuttal proposal, which includes the 400 kW to 1 MW customers in the CPP-A segment rather than the CPP-B segment, provides a logical and reasonable grouping based on statistical switching propensities. The Commission agrees with Staff that this grouping also eliminates the need to utilize a migration risk allocation mechanism in the rate translation mechanism (or rate prism) for the remainder of the mass market customers in the blended product (i.e., less than 400 kW). The Commission accepts ComEd's surrebuttal proposal, and orders the Company to include the 400 kW to 1 MW customers in the CPP-A segment, rather than the CPP-B segment. The Commission also orders ComEd to apply the switching rules applicable to the 400 kW to 1 MW customers identical to those applicable to other CPP-A customers.

2. Nature of Auction Product & Tariffed Services for 400 kW-1MW Customers

ComEd's Position

ComEd initially proposed that supply for 400 kW to 1 MW customers would be procured in the 1, 3 and 5 year blended auction ("CPP-B") that also served residential customers.

CES Proposal

The CES proposed to remove the load of customers with demands between 400 kW and 1 MW from the CPP-B blended product auction; instead, the CES proposed that these customers, referred to as the "Large Load Customer Group," should be offered a one-year retail product, based on a single-year wholesale auction similar to that offered to customers in the "Very Large

Load Customer Group” (customers between 1 MW and 3 MW). Moreover, the CES recommended that ComEd designate this one-year product as the automatic default service for the Large Load Customer Group customers. As such, under the CES proposal, these customers would not have to affirmatively elect this utility service. The primary justification for this proposal, according to the CES, is that the switching propensity for 400 kW to 1 MW customers was much more similar to customers in the 1 to 3 MW customer group than to customers with demands under 400 kW. (CES Exhibit 1.0, p. 13, lines 314-316) Another advantage, the CES explained, was the reduction of any risk premiums that suppliers providing bids for the CPP-B product might add to their bids. (CES Exhibit 4.0, p. 13, line 307-310)

The tangible difference, according to the CES, between ComEd’s proposed CPP-A retail product for Very Large Customers (1 - 3 MW customers) and the CES’ proposal for Large Customers (400 kW to 1 MW customers) is that, under the CES’ proposal, the Very Large Customers still would be required to affirmatively elect the service; the Large Customers would not. Thus, the retail product would be the default service for Large Load Customers, whereas the default product for Very Large Load Customers would be the hourly product associated with CPP-H.

ComEd’s Surrebuttal Proposal

ComEd responded to the CES proposal by agreeing to group the 400 kW to 1 MW customers with other CPP-A customers. (ComEd Exhibit 18.0, pp. 25-26, lines 556-565) However, in contrast to the CES proposal, the switching rules applicable to the 400 kW to 1 MW (subject to a resolution of the opt in / opt out issue described in section VII (B)(4)(a)(ii)). (McNeil Sur., ComEd Ex. 18.0, 19:415.21:460). According to ComEd, this modification had the collateral effect of eliminating the need for the migration adjustment factor initially proposed by

ComEd to account for the different propensity of 400 kW to 1 MW customers to switch suppliers as compared with residential customers. (McNeil Sur., ComEd Ex. 18.0, 20:435.449, 35:780.786; Alongi-Crumrine Sur., ComEd Ex. 21.0, 12:254.13:276; Alongi-Crumrine, Tr. 774.775; Spilky / Domagalski, Tr. 576.577). As a result of ComEd’s revised proposal, ComEd averred that widespread agreement on appropriate supply terms for customers with peak demands between 400 kW and 3 MW had been reached. (See O’Connor, Tr. 250).

Coalition’s Response to ComEd’s Surrebuttal Proposal

According to the CES, the proposed customer groupings outlined in ComEd’s surrebuttal testimony appropriately aligned the Large Customer Grouping (400 kW to 1 MW customers) with the Very Large Customer Grouping (1 - 3 MW customers). (See, e.g., ComEd Ex. 18.0 at lines 553-64; See also CES Ex. 4.0 at lines 252-449.)

According to the CES, under ComEd’s surrebuttal proposal, customer groupings would be better aligned with:

- The realities of the current competitive market, in which customers with peak demands of over 400 kW of demand have shown a considerably greater propensity to switch suppliers than have those below that level.⁹ Customers over 400 kW of demand also have experience contracting for multi-year products matched to multi-year customer transition charges;
- Long-standing ComEd customer classifications, which require customers with peak demands over 400 kW to have interval meters;
- The provisions of the Choice Law that make competitive declarations likely for both the Very Large Customer Group and the Large Customer Group (that is, all customers with peak demands greater than 400 kW);¹⁰

⁹ A discussion of the switching levels of the 400 kW to 1 MW customers can be found in Section V(G)(3) of the Order.

¹⁰ As time passes, it is more likely that customer groupings between 400 kW and 1 MW would be declared competitive before those below 400 kW. ComEd might be “middled” by potentially being subjected to the cross-pressures of either conforming to the expectations in the Choice Law about

(footnote continued to next page)

- Facilitating multi-year supplies in the auction, by allowing wholesale suppliers to focus more precisely upon the costs and risks associated with serving residential and smaller business customers; and
- Achieving greater precision in the allocation of migration risk premiums among customers directly in the auction rather than through the inherently problematic translation Prism.

(See CES Ex. 1.0 at lines 310-29.)

Staff's Position

Staff did not oppose ComEd's surrebuttal proposal to set the range for the CPP-A class between 400 kW and 3 MW. As rationale, Staff cited the switching data presented in Dr. O'Connor's rebuttal testimony (as noted above) which indicated that that customers in the 400 kW to 1 MW demand class currently exhibit switching characteristics that are very similar to — in fact almost indistinguishable from — customers with a peak demand of greater than 1 MW but less than 3 MW. Specifically, Staff noted that the switching data showed that 42.2% of customer load in the 400 kW to 1 MW class has switched to RES service, compared to 42.4% of customer load in the 1 to 3 MW customer grouping.

Commission Analysis and Conclusion

The Commission is persuaded by the CES' testimony and supporting data. The Commission finds reasonable ComEd's revised customer groupings that include the 400 kW to 1

(footnote continued from previous page)

competitive declarations or satisfying the interests of wholesale suppliers, including affiliates. By immediately accommodating the possibility of future competitive declarations for the large customers, the revised customer grouping would comport with ComEd's stated goal of limiting its exposure as a wires company to price and supply risk resulting from continuing energy obligations while minimizing the likelihood that the utilities would be caught in the middle as a result of the initial auction.

MW customers in the CPP-A segment rather than the CPP-B segment. Moreover, the Commission agrees with Staff that the inclusion of 400 kW to 1 MW customers in the CPP-A segment, rather than the CPP-B segment, provides a logical and reasonable grouping based on statistical switching propensities. The record demonstrates that such a grouping also eliminates the need to utilize a migration risk allocation mechanism in the rate translation mechanism (or rate “prism”) for the remainder of the mass market customers in the blended product (i.e., less than 400 kW).

3. Treatment of Customers (≥ 3 MW) Taking Services Subject To a Competitive Declaration

ComEd’s Proposal

ComEd proposed to offer the CPP-A product to customers with demands under 3 MW. (ComEd Exhibit 10.0, p. 57, lines 1235-1237) Thus, customers with demands exceeding 3 MW would be eligible for the Company’s hourly service only. ComEd averred that the hourly service is the appropriate default service for customers with demands greater than 3MWs because service to these customers is subject to a competitive declaration that became effective by operation of law in 2003. According to ComEd, given the existence of competitive declarations, the legal status of customers with demands greater than 3 MWs with respect to ComEd service obligations is different from the status of other customers. Since the competitive declaration created a legal distinction that recognizes the competitive alternatives that are available to this customer group, ComEd stated that the Company is not required to offer tariffed commodity service to customers whose service is subject to a competitive declaration.

Other Parties' Response to ComEd's Proposal

In response to ComEd's proposal, IIEC witness Stephens and USDOE witnesses Kahal and Swan proposed enlarging the range of customers eligible for CPP-A service in order to allow larger customers to become eligible for CPP-A service. (IIEC Exhibit 1, p. 2, lines 32-34; DOE Exhibit 1.0, p.7, lines 144-145 and DOE Exhibit 2.0, p. 7, lines 132-139.) USDOE witnesses Kahal and Swan and IIEC witness Stephens presented two primary arguments in support of their proposals. First, the witnesses emphasized that most large customers, both privately-owned and publicly-owned, do not wish to rely on spot market electric prices. (DOE Exhibit 1.0, p. 3, lines 77-91; IIEC Exhibit 1, p. 18, lines 398-402). Another problem that large customers have with taking service at spot prices is the difficulty that unpredictable prices have in budgeting for electric costs. (DOE Exhibit 1.0, p. 4, lines 92-107.) Mr. Stephens noted that large customers prefer certainty in costs, including electricity costs, that are outside their control, and the uncertainty and volatility of spot prices limits the "capability of production" for large customers. (IIEC Exhibit 1, p. 18, lines 398-402.) As evidence of customer reluctance to take service at spot market prices, Mr. Stephens pointed to the level of participation in Rate HEP, ComEd's current hourly service. According to Mr. Stephens, only 63 customers are taking service under Rate HEP, and only nine customers specifically elected that service. (IIEC Exhibit 4, p. 6, lines 139-140) Second, Mr. Kahal, Mr. Swan and Mr. Stephens stated that there are still many large customers that have not found satisfactory supply alternatives from RESs. (DOE Exhibit 1.0, p. 6, lines 124-128; IIEC Exhibit 4, pp. 3-4, lines 65-81) Mr. Swan discussed the experience that large federal facilities have had in attracting realistic supply offers from RESs.

Finally, IIEC witness Stephens and USDOE witnesses Swan and Kahal proposed various fixed rate options, such as quarterly prices, multi-year products, and annual products. (DOE Exhibit 2.0 Amended, pp. 14-23, lines 274-510; IIEC Exhibit 1, p. 12, lines 265-281)

Staff's Position

Staff did not oppose the proposals offered by the representatives of the large customer groups. In support of its position, Staff noted what it deemed an obvious demand among large customers for such a service, and Staff believed that the existence of an additional auction for the large customer groups would only affect the development of the retail market to a limited extent. Staff also averred that a ComEd offered supply service would function as the “price-to-beat,” which would limit the prices that RES could offer to prospective customers. (ICC Staff Exhibit 13.0, p. 17, lines 411-431)

Dr. Schlaf noted that ComEd should be indifferent as to its customers’ sources of power, since ComEd is a delivery-only company without its own generation sources. (ICC Staff Exhibit 13.0, p. 19, lines 473-474) Mr. Stephens noted that ComEd would recover all of its administrative costs related to the auction. (IIEC Exhibit 1, p. 25, lines 553-555)

If the 3 MW and above customers are included in the auction, Staff concluded that the most logical option would be to include the 3 MW and above customer group in the CPP-A auction. (ICC Staff Exhibit 13.0, p. 20, lines 480-490)

The Coalition's Position

The CES noted that in ICC Docket No. 02-0479, the Commission entered an Order that allowed the competitive declaration of customers greater than 3 MW under ComEd’s rate 6L to be competitive. (See Ill. Commerce Comm’n, *Commonwealth Edison Company, Petition for Declaration of Service Currently Provided Under Rate 6L to 3 MW and Greater Customers as*

Competitive, Final Order (March 28, 2003).) In that proceeding, the Commission determined that the market had developed to the point that, with limited exceptions, customers with demands greater than 3 MW could reliably expect to find comparable and alternative energy service products in the market. (*See id.*) At the heart of the competitive declaration was the Commission's decision that the utility would no longer have an obligation to provide a bundled service supply product to customers over 3 MW, other than an hourly priced utility product. (*See* CES Ex. 4.0 at 742-43.)

The CES pointed out that no party to the instant proceeding had petitioned the Commission to directly rescind the competitive declaration. The CES averred this to be true likely because they could not demonstrate any inability of customers over 3 MW to purchase energy services in the market on reasonable terms. (*See id.* at lines 748-51.) The CES insisted that the instant proceeding was the inappropriate forum to reconsider the Commission's competitive declaration because, after all, any need to rescind the competitive declaration must be an immediate one – not one that could leisurely await the arrival of January 2, 2007. (*Id.* at lines 751-53.) As such, the CES advised the Commission to treat these proposals, that the CES contended were designed either implicitly or explicitly to rescind the competitive declaration, as a retreat from the principle of Market Reliance, which directly contradicted the Commission's Order in ICC Docket No. 02-0479. Furthermore, the CES contended that these proposals did not comport with the goals of the Choice Law and were contrary to the facts of the existing Illinois retail electric market.

Commission Analysis and Conclusion

The Commission agrees with the CES that the instant proceeding is an inappropriate forum to reconsider the Commission's competitive declaration of the greater than 3 MW

customers. The instant proceeding has been convened to determine how the Company should procure supply and power for its commodity customers once the Transition Period ends. While the Commission notes the concerns of Staff and the large industrial customers, the Commission also finds their statements misplaced in the instant proceeding. The issue at hand is not whether the Company, as a delivery-only company without its own generation, should be indifferent to its customers' sources of power, as certain parties have contended, and should therefore not oppose a requirement to serve customers whose service has been declared competitive. On this basis, certain parties proposed that ComEd voluntarily extend the one-year fixed-price auction to include customers who have no legal right to be included. As additional rationale, Staff averred that such a product for customers greater than 3 MWs would better align ComEd's CPP-A annual service with Ameren's corresponding proposed service offering for large customers. Staff fails to acknowledge that ComEd's customers with demands greater than 3MWs have been declared competitive; no such corresponding competitive declaration has been made for any of Ameren's customers. As such, Staff's reasoning falls flat.

Rather, the issue at hand is how the Company will procure power and supply for its commodity customers to whom it is obligated to serve in the post-transition world. The Company, by the Commission's own order, will no longer have such an obligation to serve customers with demands greater than 3 MWs. Customers in the over 3 MW category have alternative sources of supply if they agree to reasonable commercial terms. The Commission notes that ComEd has not proposed to confine them to those alternative sources. Indeed, the Commission notes that ComEd will continue to offer bundled service to customers with over 3 MW in demand, but the service would be supplied through hourly energy purchases. Since

service to the over 3 MW customers has been declared competitive, the Commission cannot require ComEd to provide a one-year fixed-price auction product to said customers.

The Commission notes that the Commission's own administrative rules allow parties to directly petition the Commission to immediately rescind the current-in-place competitive declaration. No party has done so. Accordingly, the Commission finds ComEd's proposal to serve customers with demands greater than 3 MWs with its hourly priced product is appropriate.

L. Regulatory oversight and review

1. Nature of Commission Review Before, During, and after Auction

(See VII(D)(8) and V(L)(3))

3. Post Auction Workshop Process

CES' Position

According to the CES, the issue of what products should be offered to which customers should be a topic for thoughtful consideration by the Commission in the annual post-auction collaborative effort, along with other issues. *(See CES Ex. 1.0 at lines 355-57.)* The Commission has been well-served by its ability to respond to various market developments, and it should continue to evaluate the products, customers class demarcations, and other important tariff terms and conditions to look for further opportunities to promote the development of the competitive retail electric market in Illinois.

VII. TARIFF AND RATE DESIGN ISSUES

B. Matters concerning Rider CPP

2. Rider CPP – Definitions

a) Customer Supply Group definitions

(See V(I)(1)(2)(3))

4. Rider CPP – Retail customer switching rules

a. Enrollment Window

ComEd's Original Position

ComEd proposed to acquire 1-year, fixed-price supply for CPP-A eligible customers. Because these customers may choose to pursue other service alternatives, ComEd reasoned that procedures are necessary to determine which customers will be supplied through the CPP-A auction. ComEd proposed that eligible customers have a 30-day enrollment window after the conclusion of the auction to determine whether to take CPP-A service for the length of the supply period (initially January 2007 to May 2008). (ComEd Ex. 3.0, p. 38, lines 819-823) As originally proposed, any customer, whether bundled or on delivery service, that does not sign up during the enrollment period would be ineligible to take CPP-A service until the beginning of the next supply period. Further, even customers that began taking service with ComEd during the supply period would not be permitted to receive CPP-A service unless they signed up for that service during the enrollment period.

ComEd's selection of the 30-day enrollment period was not based on any empirical analysis. (ICC Staff Exhibit 5.0, p. 5, lines 118-122) Rather, in arriving at 30 days as the appropriate duration, ComEd strived to balance the trade-off between accommodating retail competition and the possibility that wholesale bidders may add a risk premium to their bids as a result of the uncertainty in estimating the size of the CPP-A load they would have to serve and

the possibility of adverse market price movements during the enrollment period (Tr. at 495, lines 6-10)

Staff and the IIEC's Position

ComEd's initial proposal was supported by Staff and the IIEC. The IIEC stated that 30 days represents a reasonable compromise between allowing customers enough time to make supply decisions and minimizing supplier bids. (IIEC Exhibit 2.0, p. 12, lines 264-267)

CCG and Dynegy's Position

Although the CCG and Dynegy both separately commented on this issue, their comments were similar. The CCG, while not indicating a preference for the length of an enrollment window, stated that even an enrollment period of 30 days would result in higher CGG generation charges as a premium to its bids. (CCG Exhibit 1.0, p. 3, lines 87-89). Dynegy, while not offering any testimony or evidence on the topic, agreed with the CCG's concerns and opposed an enrollment window of any length beyond 30 days.

BOMA's Position

The BOMA, which represents smaller customers, supported an enrollment period of 75 days. In the BOMA's opinion, 30 days is simply not enough time for the customers they represent to make informed supply decisions. (BOMA Corrected Exhibit 4.0, p. 18, lines 401-405) The BOMA noted that customers that do not have enough time to make an informed decision might make a faulty decision or no decision at all. (*Id.*) The BOMA stated that it would be impossible to verify whether a risk premium would exist, but noted that, even if one did exist, customers would be willing to accept a "possible" price premium in return for the certainty of having enough time to make a supply decision. (BOMA Corrected Exhibit 4.0, p. 20, lines 441-445)

CES' Position

The CES was even more forceful in its advocacy of a 75-day enrollment period. CES witness Dr. O'Connor noted that the 75 day enrollment period is especially problematic for many types of retail customers, such as school districts, governmental entities and hospitals. (CES Exhibit 1.0, p. 26, lines 573-575) Additionally, companies that hire energy consultants and issue requests for proposals might need more than 30 days to make their supply decisions. (*Id.* at lines 577-579) CES panel witnesses Domagalski and Spilky stated that 30 days is an insufficient amount of time to prepare bids for and negotiate with hundreds of prospective retail customers. (CES Exhibit 3.0, p. 27, lines 611-614)

ComEd's Surrebuttal Proposal

In surrebuttal testimony, ComEd presented modified switching proposals. ComEd proposed that the 30 day enrollment window would remain intact, but that existing bundled service customers could leave CPP-A service to take service from RESs. (ComEd Ex. 18.0, p. 28, line 619 and p. 30, lines 650-658) Thus, following the submission of several rounds of testimony, there was a range of opinions on the duration of the enrollment window. While one customer group (the BOMA), advocated for a 75-day window and stated its willingness to accept higher prices that might result from a longer enrollment window, another customer group, (the IIEC) preferred a 30-day window. The RESs recommended 75 days, but a potential supplier (the CCG) warned that a 30-day window would result in even higher supplier bids. Staff recommended 30 days as the duration of the enrollment window.

ComEd's Revised Proposal

Following discussions with other parties who expressed views about the appropriate length of the enrollment window, ComEd agreed to modify its proposal to provide for a 50-day

enrollment window in the first auction year and a 45-day window in all subsequent auction years. ComEd also addressed how customers will be supplied if they take no action. Specifically, ComEd addressed whether CPP-A supply will be their default service from which they can opt out or whether it will be an elective service to which they must opt in.

Commission Analysis And Conclusion

It appears that one way to resolve this issue is to compromise on an enrollment window duration that is between 30 days and 75 days. The Commission recognizes that some parties maintain that enlarging the window may lead to somewhat higher costs for customers that remain on CPP-A service for the entire supply period while other parties maintain that a shorter window could effectively deprive customers of choice because they will not have time to choose. In an effort to resolve the issue, ComEd agreed to modify its proposal to provide for a 50-day enrollment window for the first auction (January 2007 through May 2008) and a 45-day window in all subsequent auction years. As proposed by ComEd, during the enrollment window, customers with demands greater than 400 kW who are eligible for ComEd's proposed single-year, fixed-price product, may register to take that service. Depending upon the type of service the customer had elected prior to the enrollment window, customers in the Large Customer class (400 kW to 1 MW) and Very Large Customer class (over 1 MW and not declared competitive) who fail to act during that enrollment window may be placed on an hourly default rate.

The Commission accepts the Company's modified proposal, as this policy would provide customers and RESs with more time to negotiate deals, without inadvertently raising prices for CPP-A customers.

i. Duration of Window

As discussed above, ComEd initially proposed a 30-day enrollment window after the conclusion of the auction for CPP-A eligible customers to determine whether to take CPP-A service for the length of the supply period (initially January 2007 to May 2008). The BOMA and the CES argued that ComEd's proposed 30-day enrollment period for PPO and delivery service customers to opt in to bundled service supplied through the CPP-A auction is too short and should be extended to 75 days to provide more time for customers to make decisions about their supply alternatives. (Childress / Brookover Dir., BOMA Ex. 2.0, 25:535.26:551; O'Connor Dir., 24:536.28:606). Staff supported ComEd's initial 30-day enrollment window proposal.

Commission Analysis And Conclusion

The Commission is reminded of the CES' contention that the instant proceeding's proper focus is customers. The length of the enrollment period is a matter of judgment on which reasonable people can have different views. The Commission agrees with the CES' observation that the Commission's decision regarding the duration of the enrollment window will have a direct, immediate, and significant impact upon the development of the Illinois retail electric market. The challenge before the Commission is to strike the right balance between providing customers time within which to make decisions, and avoiding any inadvertent, theoretical high premium that would result if suppliers were forced to hold positions open for long periods of time. The Commission notes that the existence of a premium associated with providing customers with more time in which to analyze supply options has not been established in the instant docket. Indeed, certain intervenors in the instant proceeding challenged the basis for this alleged premium. The Commission further notes that Staff witness Schlaf is the only witness to present any quantitative evidence on this issue. At best, then, and without any empirical

evidence to support the claim, any alleged additional premium associated with a larger enrollment window is merely theoretical.

Thus, on the one hand, if the enrollment window is longer than the bare minimum amount of time customers require to decide their supply options, the Commission reckons that a slight theoretical premium may be included in bidding models that the wholesale bidders employ prior to entering the auction. The Commission notes, again, that prices that customers pay may not include this theoretical premium. On the other hand, if the enrollment window is too short, the Commission reckons that many customers simply will accept the utility supply option, not because it is the most economical option, but rather because customers simply lack sufficient time within the confines of the enrollment window to implement and complete the decision-making steps necessary to evaluate the available alternatives.

As discussed immediately above, ComEd and the CES, after discussing the issue at length in an effort to reach a compromise solution, agreed that a 50-day enrollment window in the first auction year, when customers are becoming accustomed to the new procurement environment, is appropriate, and that, for all subsequent years, a 45-day window is adequate. The Commission agrees with the Company and the CES. While the Commission is concerned with actions that inadvertently increase costs for customers, the instant record is replete with unsubstantiated concerns about the adverse effects of a longer enrollment window to prices. The Commission agrees with the CES that the competitive market will resolve any legitimate problems (that might arise from higher premiums associated with a longer enrollment window) by offering customers in the 1-3 MW customer class alternatives at a lower cost than the auction price. Competitive activity among RESs also would provide customers with alternatives from any premium unacceptable to customers. As such, customers may find reprieve from prices

inadvertently driven higher from a theoretical premium associated with a longer enrollment window; customers have no such reprieve from an enrollment window that is simply too short for customers to evaluate their available supply alternatives. Given the lack of empirical evidence to support the basis for this theoretical premium, the Commission concludes that customers would be better served by paying this theoretical premium and having more time to make supply decisions. The Commission therefore approves a 50-day enrollment window for ComEd's initial auction and 45-day enrollment window for all subsequent auctions.

5. Rider CPP – Limitations and Contingencies

(See V(K))

6. Rider CPP – Translation to retail charges

a) Customer Supply Group Migration Risk Factor

ComEd's Proposal

ComEd initially proposed to “translate” the wholesale prices resulting from the auction into retail rates that it will charge customers. (*See ComEd Ex. 7.0 at lines 227-38.*) The goal of the translation mechanism, according to ComEd, is to properly allocate costs (higher prices) to those customers who caused those costs (that is, who are responsible for the price being higher). One of the relevant costs to be assigned is the cost associated with the possibility that customers may migrate away from the utility supply and to the competitive market. That is, all else being equal, the auction price would be higher for a customer class with a greater propensity to choose RES service rather than remain on utility supply.

ComEd originally proposed to include a Migration Risk Factor in the translation methodology for calculating CPP-B service Supply Charges, at a time when ComEd was

proposing that the Large Load Customer Supply Group would be part of the CPP-B auction segment. (*e.g.*, Alongi / Crumrine Dir., ComEd Ex. 7.0, 42:958.44:997, 55:1239.62:1382; Alongi / Crumrine Dir., ComEd Ex. 7.6). According to ComEd, the Large Load Customer Group had by far the greatest migration risk impact per MWh, more than twice that of the next most significant Group. (Alongi / Crumrine Dir., ComEd Ex. 7.0, 61:1367.1375). Residential customers had the lowest impact. (*Id.*).

Coalition's Proposal

The CES expressed support for ComEd's proposed translation mechanism as it appropriately includes an adjustment to reflect the migration risk within each customer group. The CES explained, however, that the size of the factor should be greater than that which ComEd had proposed. Specifically, the CES justified a higher number by explaining that 100% of Power Purchase Option ("PPO") load that should be considered "at risk" of migration, rather than 50% under the ComEd proposal. (CES Ex. 3.0, pp. 6-10, lines 113-200) To justify its position, the CES cited movements by customers in and out of PPO and RES service as evidence of their willingness to switch solely on the basis of price. (CES Ex. 3.0, pp. 6-7, lines 124-153)

Other Parties' Positions

In contrast, Staff and the BOMA, in their respective direct testimony, recommended the elimination of the Migration Risk Factor, on various grounds. (Lazare Dir., Staff Ex. 6.0, 25:569.30:666; Brookover / Childress Dir., BOMA Ex. 2.0, 15:307.19:401).

Parties' Position on Rebuttal

ComEd, in rebuttal testimony, continued to support its original proposal, while CES, Staff, and the BOMA adhered to their respective positions (CES elaborated upon and revised its proposal in certain respects). (Alongi / Crumrine Reb., ComEd Ex. 13.0, 13:269.24:518;

O'Connor Reb., CES Ex. 4.0, 5:97.602, 28:595.3:724; Domagalski / Spilky Reb., CES Ex. 6.0, 1:19.2:26, 2:40.9:191; Lazare Reb. Staff Ex. 13.0, 6:120.13:309; Brookover / Childress Reb., BOMA Ex. 4.0, 8:163.12:262). (*See also* ComEd Cross Ex. 6 (DOE data request response indicating that wholesale suppliers are likely to price the value of call options in auction bids)).

ComEd's Surrebuttal Proposal

ComEd proposed, in surrebuttal testimony and in light of certain Staff and intervenor direct and rebuttal testimony, an integrated "package" of three auction / rate design changes, two of which were to move the Large Load Customer Supply Group out of CPP-B and into CPP-A and to eliminate the Migration Risk Factor from the translation methodology for CPP-B. As ComEd explained, in the interests of narrowing the issues, the Company would accept the elimination of the Migration Risk Factor in that scenario. (Alongi / Crumrine Sur., ComEd Ex. 21.0, 12:254.259). If the Commission rejected the integrated proposal, however, ComEd insisted that its formulation of the Migration Risk Factor (not that of CES) should be incorporated within the CPP B translation methodology.

Commission Analysis And Conclusion

The Commission agrees that ComEd's modified customer groupings, as revealed in the Company's surrebuttal testimony, largely resolve the problem of error inherent in the development and application of any migration risk premium allocation. Once the 400 kW to 1 MW customer group is removed from the CPP-B product and included with the CPP-A product, any migration risk premium that suppliers might include in the blended product auction price would certainly be smaller and easier to handle, and any error in managing that allocation would have fewer consequences.

Moreover, the Commission agrees that, by expanding the CPP-A product to include the 400 kW to 1 MW customers, whatever migration risk premium suppliers priced into their bids would be related to and allocated among customers within that group. This would obviate any need to use the Prism to allocate any premium as it might be related to this customer group. The Commission also finds that the allocation method in the Prism, as originally advocated by ComEd, relies on *historical* switching levels rather than on market expectations of *prospective* switching by customers under 1 MW. The Commission favors the Company's revised proposal, as proposed in surrebuttal testimony, as the inclusion of the 400 kW to 1 MW customers into the CPP-A product group, will isolate any migration risk premium to that group in the auction itself. This approach is consistent with the Market Reliance principle advanced by ComEd witness Dr. LaCasse.

Accordingly, the Commission accepts ComEd's surrebuttal proposal that eliminates the Migration Risk Factor.

7. Rider CPP – Supply Administration Charge

CES' Position

The CES made various general recommendations regarding how ComEd should calculate and assess the Supply Administration Charges ("SAC"). (*See* O'Connor Dir., CES Ex. 1.0, 7:154.8:163; Domagalski / Spilky Dir., CES Ex. 3.0, 15:315. 21:455; Domagalski / Spilky Reb., CES Ex. 6.0, 18:453.458). Specifically, the CES witnesses Domagalski and Spilky in their direct panel testimony noted the lack of specifics in ComEd's proposal regarding the amount and methodology for determining the Supply Administration Charge. They also identify additional costs they believe ComEd may not have considered. (CES Ex. 3.0, pp. 15-18, ll. 318-390; pp. 23-24, ll.498-527) Lastly, the CES contended that ComEd did not specify what costs should be

included in the SAC, nor had the Company proposed a reasonable allocation methodology for these costs. According to the CES, all ComEd has stated in the instant proceeding is that the actual value of the SAC will be “set in the rate case” and that it is “only seeking that the Commission approve this placeholder language regarding the Supply Administration Charge.” (ComEd Ex. 7.0 at lines 517, 521-22). Although the CES acknowledged that setting the actual rates within the context of a complete rate case is appropriate, the CES insisted that ComEd failed to meaningfully describe the parameters of this “placeholder.” Furthermore, according to the CES, ComEd’s proposed allocation method improperly placed an inappropriate number of the SAC costs onto the residential and smaller commercial classes. (*See* ComEd Ex. 7.0 at line 512, ComEd Ex. 7.2 Rider PPO-MVM at Sheet No. 295, and ComEd Ex. 7.5 Rate BES-NRB at Sheet XE.)

The CES noted that ComEd properly acknowledged that “assigning costs to ‘cost-causers’ benefits retail customers and contributes to the overall fairness of rates.” (ComEd Ex. 7.0 at lines 259-60). According to the CES, this approach is consistent with the structure outlined in the Act. (*See* 220 ILCS 5/16-110(c)(ii) (prescribing that an electric utility is permitted to collect “a fee to compensate the electric utility for the service of arranging the supply or purchase of such electric power and energy”); *see also* 220 ILCS 5/16-112(k) (providing that costs shall be applied taking into account “the daily, monthly, annual and other relevant characteristics of the customers’ demands on the electric utilities’ system.”).) The CES requests that the Commission direct ComEd to equitably allocate the SAC costs so that the costs are assigned to the cost-causers.

In addition, the CES presented three arguments regarding ComEd’s proposed SAC. **First**, the CES asserted that all direct and indirect costs associated with the service of arranging

for the supply of electric energy supplied by the utility should be allocated taking into consideration the relevant characteristics of the customers' demands on the electric utility's system. (See CES Ex. 3.0 at lines 339-42.)

The CES asserted that the Commission should assure that generation supply costs are not allocated to delivery services for collection. The CES' concern is that an improper allocation of costs will distort the true generation supply costs, distort the market, create false price signals, and act to frustrate customer choice and competition. (See CES Ex. 3.0 at lines 346-55.) Similarly, the CES presented evidence that ComEd will incur a variety of indirect costs as a consequence of the auction methodology, including costs related to:

- processing and tracking customer accounts which choose the PPO-MVM or opt in to CPP-B;
- communicating changing load characteristics to the winning suppliers as customers migrate;
- paying the suppliers each month;
- calculating the Accuracy Assurance Factor ("AAF") on an ongoing basis;
- communicating to large accounts and smaller accounts through in-person and call center communications respectively;
- utilizing and/or upgrading billing and communications systems; and
- producing marketing or communication pieces for distribution to customers regarding new supply options and applicable auction and product rules.

(See CES Ex. 3.0 at lines 362-77.) According to the CES, ComEd should allocate all of these costs to the energy component of customers' bills. (See CES Ex. 3.0 at lines 381-95.)

The CES cited precedent for identifying such costs, for instance, the identification and allocation of marketing expenses as related to energy supply through the PPO. (See Ill. Commerce Comm'n, *Central Illinois Public Service Company/Union Electric Company, Petition For Approval of Tariff Sheets Implementing Revised Market Values Index Methodology*, Docket Nos. 02-0656, 02-0671, 02-0672, 02-0 consol., Final Order (March 28, 2003.)) Similarly, expenses such as those included above should be allocated as supply administrative overhead in

addition to the specific employee time and capital expenses and should be correlated to the relevant indirect supply-related activities and tracked. According to the CES, all of the direct and indirect costs and expenses associated with this new procurement model should be distributed among the appropriate capital and non-capital cost categories and allocated an appropriate administrative overhead cost proportion; the combination of all of these types of costs should be included in the SAC. (*See* CES Ex. 3.0 at lines 381-90.)

Second, the CES asserted that the SAC should be allocated evenly per kWh rather than by a fixed-dollar amount per account, per month. (*See id.* at lines 399-439.) Additionally, the CES argued that the SAC should be tracked in the AAF to ensure that ComEd neither over nor under-collects for this expense. (*See* CES Ex. 6.0 at lines 427.) According to the CES, the per-kWh allocation approach properly takes into account the fact that the average non-residential customer account uses more kWh than the average residential account, and that more of ComEd's own internal resources and indirect supply administration costs under the proposed auction methodology will be directed toward the non-residential classes in administering the tariffs. (*See* CES Ex. 3.0 at lines 430-34.) The CES averred that this allocation method produced a more accurate allocation of these costs consistent with the requirements of the Act and is consistent with the method ComEd proposed for the application of the AAF. (*See* ComEd Ex. 7.1 at Sheet No. 292, ancillary transmission costs; ComEd Ex. 7.7 at 10, network transmission service; ComEd Ex. 7.3 at Sheet No. 301 and (presumably) uncollectible expenses.)

Third, although the Commission should set the actual charge and the actual allocation in ComEd's pending rate case (ICC Docket No. 05-0597), the CES argued that the Commission also should ensure that a "placeholder" is properly designed within the instant proceeding. According to the CES, ComEd failed to appropriately describe the parameters of such a

placeholder and the Commission should address the types of costs which should be included in the SAC as well as the proper allocation method, and the manner in which the SAC is to be set in this proceeding. (See CES Ex. 6.0 at lines 453-58.)

Other Parties' Positions

Staff concurred with ComEd's contention that this matter would be better addressed in ComEd's currently pending rate case (ICC Docket No. 05-0597). According to Staff, ComEd's rate case would present a more comprehensive set of facts and analysis upon which to base decisions about this matter. Lastly, Staff averred that the rate case would provide the proper context in which to review the costs of both the delivery and procurement segments and assign them appropriately. (ICC Staff Exhibit 17.0, p. 10, ll. 201-219)

ComEd's Response

ComEd insisted that the CES' proposals are premature, as they related to issues to be litigated in ComEd's rate case, which is currently pending as ICC Docket No. 05-0597. According to ComEd, the language regarding these charges in Rider PPO-MVM is placeholder language, and the issues sought to be raised by the CES are appropriately dealt with in that Docket, not here. (Alongi / Crumrine Reb., ComEd Ex. 13.0, 45:970.46:991; Alongi / Crumrine Sur., ComEd Ex. 21.0, 38:889.39:907).²³

Therefore, according to ComEd, the CES' issues are beyond the scope of this proceeding. (ComEd Ex. 13.0, p. 60, ll. 1322-1324)

Commission Analysis and Conclusion

ComEd stated that the actual value of the SAC will be "set in the rate case" and that they are in the instant proceeding "only seeking that the Commission approve this placeholder language regarding the Supply Administration Charge." The Staff and the CES concurred that

ComEd's rate case, which is currently pending as ICC Docket No. 05-0597, is the appropriate forum in which to review and assign the costs of both the delivery and procurement segments. The CES contended, however, that the instant proceeding is the appropriate venue in which to describe the appropriate parameters of this "placeholder." The Commission agrees. While certainly it is appropriate to set the actual rates within the context of a complete rate case, the Commission believes that a modicum of direction, with respect to the Company's proposed SAC, is warranted here.

While the Commission acknowledges and agrees that the actual charge and the actual allocation of the SAC should be set in the Company's pending rate case, it is incumbent upon the Commission to ensure that the "placeholder" is properly designed within the instant proceeding. The Commission finds it proper to address the types of costs that should be included, the proper allocation method, and the manner in which the SAC is to be set in the instant proceeding. After all, as the CES pointed out, the Commission already is addressing the mechanics associated with ComEd's proposed retail tariffs. ComEd has not provided any rationale for delaying consideration of the mechanics of the SAC, and the Commission finds no creditable reason to do so in the record.

Accordingly, the Commission directs ComEd to ensure that all direct and indirect costs associated with the service of arranging for the supply of electric energy supplied by the utility be allocated taking into consideration the relevant characteristics of the customers' demands on the electric utility's system. Specifically, the Commission directs ComEd to assure that generation supply costs, both direct and indirect, are not allocated to delivery services for collection. The Commission agrees that an improper allocation of costs will distort the true generation supply costs, distort the market, create false price signals, and act to frustrate

customer choice and competition. In addition, the Commission agrees that the SAC should be allocated evenly per kWh, rather than by a fixed-dollar amount per account, per month, and should be tracked in the AAF to ensure that ComEd neither over- nor under-collects for this expense.

ComEd is directed to ensure that the SAC, as proposed in ICC Docket No. 05-0597, is consistent with the parameters outlined herein.

8. Rider CPP – Accuracy Assurance Mechanism

(See VII(B)(7))

9. Rider CPP – Subsequent review / Contingencies

(See V(K))

C. Matters Concerning Proposed Rider PPO-MVM

2. Supply Administration Charge

(See VII(B)(7))

D. Additional tariff and rate design issues

4. DASR procedures in anticipation of serving new customer facilities

Coalition’s Position

The CES requested that ComEd clarify the RES “Direct Access Service Requests” (“DASRs”) procedures for a RES to enroll a new customer account in anticipation of serving their load requirements when the account and meter numbers are not yet assigned. (Domagalski / Spilky Dir., CES Ex. 3.0, lines 597-600)

The CES argued that the Commission should require ComEd to formalize the methodology by which it intends to treat new customer facilities under its proposal. The CES requested that the Commission require specific procedures to be provided to RESs that indicate how a RES may have new customers assigned to it when those customers' account and meter numbers are not yet known.

ComEd's Response

In response, ComEd indicated that in its rate case it will propose a RES DASR procedure for purposes of serving new facilities so that a new customer need not take bundled service prior to transitioning to delivery service. (*See* ComEd Ex. 13.0, at lines 1275-77.)

CES' Response

ComEd stated that it has a procedure that would enable a RES to DASR a customer account in anticipation of serving their load requirements in advance of the time in which an official account number and meter number(s) are assigned. However, the CES pointed out that they have not been informed of what specific steps will need to be followed in order to ensure that the Company properly assigns unknown account numbers and meter numbers to the respective RES. As such, the CES requested that the Commission require ComEd, in the instant proceeding, to clarify the procedures for a RES to enroll, via the DASR process, a new customer account in anticipation of serving their load requirements when the account and meter numbers are not yet assigned. (Domagalski / Spilky Dir., CES Ex. 3.0, lines 597-600)

The CES responded that, ComEd's DASR procedure apparently would enable a RES to enroll a customer account, via the DASR process, in anticipation of serving its load requirements in advance of the time that an official account number and meter number(s) are assigned.

However, the CES averred that it was still unclear what specific procedure RESs are to follow in order to have these accounts assigned.

Commission Analysis and Conclusion

By the Company's own testimony, ComEd is committed to fully specifying its proposal regarding DASR procedures for RESs in the upcoming rate case such that the RESs will have a full understanding. Specifically, ComEd agreed to allow new customers to the ComEd distribution system to directly and immediately elect delivery services from a RES. As such, we see no valid reason to not require ComEd to do so in the instant proceeding. Accordingly, the Commission directs ComEd to provide language that clarifies the Company's procedures for a RES to enroll a new customer account, via the DASR process, in anticipation of serving their load requirements when the account and meter numbers are not yet assigned within ten (10) business days of entry of this Order.

5. Recategorizing certain condominium customers as Non-Residential customers

CES' Position

According to the CES, as a result of tariffs approved many years ago, a large number of condominium buildings currently are classified as residential rather than commercial for purposes of serving such common area needs as lobby and hallway lighting and heating. Although the CES acknowledged that this categorization approach was an understandable corollary of the promotional pricing for all-electric homes and commercial buildings in the past, the CES averred that, going forward, it fails to recognize the reality that these common areas have all of the characteristics of commercial load. Accordingly, the CES proposed that ComEd reclassify these customers, from residential to commercial, in order to recognize that these

common areas have all of the characteristics of commercial load. The CES averred that such re-categorization would not represent any downside for such customers, since it likely would enhance such customers' opportunities for choice.

ComEd's Response

In response, ComEd stated that the Company did not oppose the CES' recategorization proposal. (Alongi / Crumrine Reb., ComEd Ex. 13.0, 58:1284.1286).

CES' Response

The CES pointed out that, while ComEd did not oppose the CES' recategorization, ComEd neglected to describe how the Company intended to formally do so. According to the CES, ComEd's recategorization methodology should be formally recognized in the instant proceeding and then be implemented in ComEd's rate case, which is currently pending as ICC Docket No. 05-0597.

Commission Analysis and Conclusion

Although there are numerous willing RESs competing to provide non-residential service, residential competition has been slow to develop. The Commission agrees with the CES that the size of these condominium customers and their respective loads certainly warrant recategorization, from residential to commercial classification. Accordingly, the Commission directs ComEd to provide its recategorization methodology within ten (10) business days of a Order in the instant proceeding. The Commission further orders ComEd to implement its recategorization methodology in the Company's currently pending rate case (ICC Docket No. 05-0597).

6. Treatment of Uncollectibles

CES' Position

As noted above, the CES observed the lack of specific information in ComEd's proposal regarding the amount and methodology for determining the adjustment for supply-related uncollectible costs. (CES Ex. 3.0, pp. 15-18, ll. 318-390; pp. 23-24, ll.498-527) According to the CES, ComEd offered no estimates of this cost component, and ComEd failed to propose an allocation methodology. To remedy this, the CES proposed that the Commission order ComEd to account separately for uncollectible expenses between "delivery services" related uncollectible expenses and "energy" related uncollectible expenses, and to charge to customers accordingly.

Other Parties' Positions

Staff concurred with ComEd's contention that this matter would be better addressed in ComEd's currently pending rate case (ICC Docket No. 05-0597). According to Staff, ComEd's rate case presented a more comprehensive set of facts and analysis upon which to base decisions about this matter. Lastly, Staff averred that the rate case provided the proper context in which to review the costs of both the delivery and procurement segments and assign them appropriately. (ICC Staff Exhibit 17.0, p. 10, ll. 201-219)

ComEd's Response

ComEd identified "uncollectibles" as a supply-related cost component and discussed its ability to collect it. (*See* ComEd Ex. 7.0 at lines 513-16; ComEd Ex. 7.2 at Sheet No. 296; ComEd Ex. 7.5 at Sheet XE.) ComEd offered no estimates of this cost component, and ComEd failed to propose an allocation methodology.

Commission Analysis and Conclusion

The Commission notes that all customers, regardless of their respective energy suppliers, are delivery services customers of the utility. That is to say, customers who remain or elect ComEd service are both energy commodity and delivery service customers of ComEd; customers who opt for third-party supply with a RES are not ComEd's energy commodity customers but are ComEd's delivery service customers. Accordingly, the Commission concludes that ComEd should assign the delivery-related uncollectible expenses as delivery service charges that are allocated, and therefore paid by, all delivery-service customers. However, the Commission concludes that ComEd should allocate energy-related uncollectible to those customers who choose or remain with ComEd as their energy supplier. Moreover, the Commission orders ComEd to allocate these costs evenly per kWh into the energy supply charges of the CPP-A (PPO-MVM), CPP-B and CPP-H tariffs. Lastly, the Commission orders ComEd to track these supply-related uncollectible expenses in ComEd's AAF, as proposed by the CES, in order to ensure that the Company neither over-collects nor under-collects these costs.

7. Credit risk and other administrative costs

CES' Position

The CES requested that the Commission order ComEd to implement a revised methodology for allocating expenses that will be incurred as a result of ComEd providing service under Rate CPP-H. According to the CES, ComEd's proposed rate structure does not properly allocate credit risk and administrative costs to customers taking service under ComEd's proposed CPP-H product. (*See* ComEd Ex. 1.6.) According to the CES, the hourly energy product, as currently proposed by ComEd, would not fully recover the costs associated with providing that service to customers. The CES noted that ComEd's proposed CPP-H product was meant to

serve: (1) non-residential customers whose service has been declared competitive; (2) self-generating customers; and (3) any other customers who voluntarily elect hourly energy rates.

The testimony of CES witnesses Domagalski and Spilky explained additional costs exist that are associated with charging customers a rate that changes on an hourly basis compared to a rate that is reset annually. (*See* CES Ex. 3.0 at lines 498-525.)

First, the CES presented evidence that customers taking Rate CPP-H will be exposed to potentially wide variability in hourly prices. (*See* CES Ex. 3.0 at lines 503-04.) As a result, ComEd witness Crumrine admitted, these customers will be exposed to a more volatile price and incur more significant risks. (Tr. at 768-69.) According to the CES, this uncertainty in the prices to be charged to these customers increased the risk that ComEd will have uncollectibles for customers taking service under this rate that will exceed levels incurred by ComEd in providing service under its annual and multi-year blended rates. (*See id.* at lines 504-05.)

Moreover, according to the CES, ComEd's uncollectibles risk associated with providing service under an hourly rate will be much greater under ComEd's proposed post-transition rate structure. (*See id.* at lines 506-08.) Second, the CES presented evidence that serving hourly customers likely will cost more than serving customers receiving the Rate CPP-A and CPP-B products. CES witnesses Domagalski and Spilky explained that: (1) hourly products require more intervention which, in turn, increased costs to serve (e.g., acquiring, scrubbing, and inputting hourly data will take additional time to process); (2) hourly customers likely would have more questions about their bills, especially when prices are high; and (3) there is a much higher probability that Rate CPP-H bills would be delayed due to a lack of data, resulting in increased working capital expenses. (*See* CES Ex. 3.0 at lines 517-24.) According to the CES,

the direct and indirect costs and related capital expenditures should be considered in calculating the total cost associated with serving hourly customers.

For consistency and for equity purposes, the CES recommended that these costs should be allocated evenly per kWh to all customers receiving the hourly product. (*See id.* at lines 528-31.)

Commission Analysis and Conclusion

The CES presented un rebutted evidence that serving customers under ComEd's proposed CPP-H product will create additional costs that are generally not incurred with the fixed-price full requirements CPP-A and CPP-B products. The Commission directs ComEd to utilize an allocation methodology associated with increased rate of uncollectible expenses resulting from customers being exposed to wide variability in hourly prices; and directs ComEd to establish a methodology for identifying the incremental costs associated with serving hourly customers above and beyond that contemplated for those receiving the CPP-A and CPP-B auction products as discussed herein. As with the SAC, these costs should be fully accounted for and allocated on a simple \$/kWh basis as part of the energy charges to customers taking service under Rate CPP-H. These costs should be updated annually to reflect changes in the cost structure.

8. Integrated Distribution Company Issues

CES' Position

To assist in providing objective educational materials to the public that are in line with the Commission's "Integrated Distribution Company" rules, the CES asked the Commission to direct ComEd to initiate a separate and new docketed proceeding for consideration of new procurement process communication materials. (*See id.* at lines 441-55.)

The CES cautioned that the Commission should be concerned about how ComEd may go balance “good customer communications” with what may be construed as “marketing” of its new supply options. For example, hosting customer lunches might be viewed by some as simply a forum for education, while others may view it as marketing. (Crumrine Tr. at 794-97.) As ComEd witness Crumrine admitted, “Some people will consider [customer communications] advertising while we consider them educational materials.” (*Id.* at 797.)

The CES stated that ComEd and other interested parties should have an opportunity in an open forum to derive an appropriate balance between getting the word out to customers about the supply choices available from ComEd while ensuring there is no bias that would direct customers toward necessarily taking those supply options offered by the utility. (*See* CES Ex. 3.0 at lines 449-53.) As a result, the CES recommended that the Commission direct ComEd to initiate a separate docketed proceeding in which such communication and marketing materials would be reviewed, commented upon, and approved by the Commission. Lastly, the CES suggested that related accounting issues should be likewise addressed in these docketed proceedings.

Commission Analysis and Conclusion

In July of 2002, ComEd was approved to operate as an Integrated Distribution Company (“IDC”). (*See generally* Commission Docket No. 02-0379.) As ComEd recognized, ComEd cannot act, as an IDC, to obtain or retain customers on its supply tariffs. The Commission is concerned about the manner in which ComEd may go about balancing “good customer communications” with what may be construed as “marketing” of its new supply options. Accordingly, the Commission directs ComEd to file a Petition within thirty (30) days of the entry

of this Order to initiate a collaborative proceeding to address the post-transition customer education materials and related accounting issues.

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Commonwealth Edison Company (ComEd) is an Illinois corporation engaged in the distribution and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties and the subject matter herein;
- (3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence of record, and are hereby adopted as findings of fact and conclusions of law; the Appendix attached hereto provides supporting calculations;
- (4) ComEd's proposed CPP tariffs shall be adopted;
- (5) ComEd's revised design for auction products CPP-A, CPP-B, and CPP-H shall be adopted;
- (6) A 50-day enrollment window for the CPP-A product for the first auction shall be adopted; a 45-day enrollment window for the CPP-A product for all subsequent auctions shall be adopted
- (7) The Initial Auction shall be held in September 2006;
- (8) ComEd is directed to assess the Supply Administration Charge ("SAC") on a per kWh volumetric basis;
- (9) ComEd is directed in ICC Docket No. 05-0597 to assure that new customers to the ComEd system are fully eligible to elect delivery services on the first day of service;
- (10) ComEd is directed to agree and implement the findings herein in ICC Docket No. 05-0597 that the common area customer classification for service to larger condominium buildings will be properly re-categorized from being residential to commercial;
- (11) ComEd is directed to separately account for the uncollectible amounts related to delivery services customers and bundled services customers by class;
- (12) ComEd is directed to properly recognize the increased uncollectible expenses rate resulting from CPP-H customers being exposed to wide variability in hourly prices; and

(13) ComEd is directed to treat all direct and indirect costs and related capital expenditures associated with serving CPP-H customers.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the tariff sheets presently in effect rendered by Commonwealth Edison Company are hereby permanently canceled and annulled, effective at such time as the new tariff sheets approved herein become effective by virtue of this Order.

IT IS FURTHER ORDERED that the proposed tariffs, filed by Commonwealth Edison Company on February 25, 2005, are permanently canceled and annulled.

IT IS FURTHER ORDERED that Commonwealth Edison Company is authorized to file new tariff sheets in accordance with Findings (5), (6), (7), (8), (9), (10), (11), (12) and (13) of this Order, applicable to service furnished on and after the effective date of said tariff sheets.

IT IS FURTHER ORDERED that any motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

Respectfully submitted,

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

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