

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Central Illinois Light Company	:	
d/b/a AmerenCILCO	:	
	:	05-0160
Proposal to implement a competitive procurement	:	
process by establishing Rider BGS, Rider BGS-L,	:	
Rider RTP, Rider RTP-L, Rider D, and Rider MV.	:	(Cons.)
(Tariffs filed on February 28, 2005)	:	
Central Illinois Public Service Company	:	
d/b/a AmerenCIPS	:	
	:	05-0161
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(Tariffs filed on February 28, 2005)	:	
Illinois Power Company d/b/a AmerenIP	:	
	:	05-0162
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(Tariffs filed on February 28, 2005)	:	

**INITIAL BRIEF OF CONSTELLATION
ENERGY COMMODITIES GROUP, INC.**

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ENERGY COMMODITIES GROUP, INC.**

Constellation Energy Commodities Group, Inc. (“CCG”), by its attorneys, Karegianes&Field, LLC, pursuant to Section 10-101 of the Public Utilities Act (“PUA”) and Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), hereby submits its Initial Brief with regard to the proposed tariffs defining a competitive supply procurement process (“Illinois Auction Proposal”) filed by Central Illinois Light Company d/b/a AmerenCILCO,

Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP (“Ameren”) with the Commission on March 9, 2005.

I. EXECUTIVE SUMMARY

CCG is a wholly-owned subsidiary of Constellation Energy Group, Inc., a Fortune 200 diversified energy company based in Baltimore, Maryland. CCG’s focus is on wholesale power transactions with wholesale customers. A substantial portion of CCG’s business involves providing wholesale full requirements electricity service to load serving entities and distribution utilities that provide standard offer service to their customers. CCG is a potential wholesale bidder in the proposed Illinois auction. CCG suggested changes to Ameren’s Illinois Auction Proposal, as evidenced in Mr. Smith’s Direct and Rebuttal testimonies. (CCG Exhs. 1.0 and 2.0). Those suggested changes address such matters as auction timing, the Commission’s review of the auction results and the proposed form Supplier Forward Contract (“SFC). Despite the changes that CCG has suggested as part of this proceeding, CCG continues to fully support Ameren’s Illinois Auction Proposal; the modifications that CCG has suggested, if approved, will improve the process proposed by Ameren.

II. NEED FOR COMMISSION ACTION

The Illinois General Assembly enacted the *Electric Service Customer Choice and Rate Relief Law* in 1997 (“Restructuring Law”). Among other things, the Restructuring Law provided the utilities with the flexibility to reorganize their

businesses, retire generating plants and transfer or sell assets during the mandatory transition period. (220 ILCS 5/16-111(g)). The mandatory transition period ends on January 1, 2007. As noted in its testimony, Ameren no longer owns any significant generation.

AmerenCIPS and AmerenCILCO transferred their generation several years ago (except that AmerenCILCO retained ownership of several small (1 MW) power module units that are expected to be transferred out of AmerenCILCO before January 1, 2007). AmerenIP transferred all of its generation before it was acquired by Ameren Corporation. Presently, each Ameren company is served under a full requirements contract that expires at the end of 2006.

(Ameren Ex. 1.0, lines 66-71).

Because the Ameren companies transferred all, except for an insignificant amount of their generation during the mandatory transition period, and because their current full requirement contracts expire at the end of 2006, Ameren will have to purchase its power supply from the wholesale market.

In an effort to identify and address issues related to the post-transition period, including issues related to the procurement of power, the Commission sponsored the Post-2006 Initiative, a collaborative working group process with extensive representation from various stakeholder interests. At the conclusion of that process, the Staff of the Commission issued its report endorsing a vertical tranche, descending clock auction. (See The Post 2006 Initiative: Final Staff Report to the Commission (Dec. 2, 2004)). The tariffs that were filed by Ameren in this proceeding set forth a process for a vertical tranche, descending clock auction whereby Ameren would purchase via a transparent mechanism

generation service at market prices to serve its bundled service customers. (Ameren Ex. 3.0, lines 644-648).

Ameren has an on-going obligation under the PUA to provide “bundled electric power and energy delivered to the customer’s premises consistent with the bundled utility service provided by the electric utility on the effective date of this Amendatory Act of 1997.” (220 ILCS 5/16-103(c)). Because Ameren does not own significant generating assets, in order for it to meet its obligation to provide bundled service under the PUA, it will have to purchase power and energy at wholesale from a company or companies that own or control the output of generating assets, or otherwise have entitlements to wholesale power. It must also be able to recover its prudently and reasonably incurred costs for such purchases. (220 ILCS 5/1-102(a)(iv)). Under governing federal law, those rates are subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”)¹ As discussed above, Ameren no longer owns significant generating assets and the mandatory transition period will end on January 1, 2007. Therefore, there is a need for Commission action in advance of January 1, 2007, to ensure that a process is in place for Ameren to purchase power and energy in order to meet its service obligations to its customers under the PUA.

¹ Wholesale costs or rates are governed exclusively by FERC. *See Nantahala Power & Light Co. v. Thornburgh*, 476 U.S. 953, 963 (1986).

III. LEGAL ISSUES

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

The Restructuring Law created a new regulatory structure that would promote a competitive wholesale and retail electric market in Illinois. (220 ILCS 5/16-101, *et seq.*). Recognizing that “[c]ompetitive forces are affecting the market for electricity as a result of recent federal regulatory and statutory changes and the activities of other states” and that “[a] competitive...market must benefit all Illinois citizens” (220 ILCS 5/16-101A(b), (d)), the Restructuring Law stated that the “Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers.” (220 ILCS 5/16-101A(d)). In order to bring about the new regulatory structure, alternative electric retail suppliers (“ARES”) were permitted to compete with utilities, a mandatory transition period was established, residential rates were reduced by as much as 20% for AmerenIP and by lesser amounts for AmerenCilco and AmerenCIPS, all rates were frozen for the duration of the mandatory transition period, and utilities were permitted to restructure their businesses and divest assets, including generating assets. In addition, private investors have built over 9,000 MWs of new generation. (Ameren Ex. 2.0, lines 117-118). While the restructuring continues to evolve, several issues will need to be resolved, including the issue of how utilities that no longer own generation will procure power and energy so that they can meet their obligations for tariffed service. The proposed tariffs, if approved, would address this issue.

B. ICC Authority under Article IX and Article XVI to Approve the Filed Tariffs

1. Article XVI and Post Transition Rate Setting Authority

The Restructuring Law notes that “[l]ong standing regulatory relationships need to be altered to accommodate the competition that could fundamentally alter the structure of the electric services market.” (220 ILCS 5/16-101A(b)). The two key provisions under the Restructuring Law that address the approval of rates after the mandatory transition period are Sections 16-112(a) and 16-111(i). First, Section 16-112(a) instructs the Commission on how to determine market rates. This, among other things, includes a determination in accordance with “a tariff that has been filed by the electric utility with the Commission pursuant to Article IX...and that provides for a determination of the market value for electric power and energy.” (220 ILCS 5/16-112(a)). Second, Section 16-111(i) mandates that the Commission, in establishing tarified rates and charges, is to consider “the then current or projected revenues, costs, investments and cost of capital directly or indirectly associated with the provision of such tarified services.” (220 ILCS 5/16-111(i)). This Section also mandates that “[i]n determining the justness and reasonableness of the electric power and energy component of an electric utility’s rates for tarified services...the Commission shall consider the extent to the which the electric utility’s tarified rates...exceed the market value determined under Section 16-112....” (220 ILCS 5/16-111(i)).

Article XVI authorizes the Commission to establish market value through various means and mandates that the Commission take into account the market value in considering the justness and reasonableness of the charges for the

power and energy component of the tariffed service. Ameren filed its tariffs pursuant to Article XVI and Article IX, discussed below, for the provision of tariffed services. Those tariffs establish a process for procuring power and energy in the wholesale market through an auction. The auction, by definition and design, is a competitive process where various suppliers will bid to provide wholesale full requirements electricity service to Ameren. The results of the bidding process will establish the market value for providing electricity service at wholesale under Section 16-112(a) and would also be the prudently incurred costs to Ameren. Clearly, Sections 16-112(a) and 16-111(i) authorize the Commission to establish market value and to consider market value in establishing just and reasonable rates.

2. Article IX Rate Setting Authority

As previously discussed, Section 16-103 requires Ameren to continue to offer bundled electric service to its customers consistent with the bundled service it provided in 1997. (220 ILCS 16-103(c)). Ameren filed its tariffs in order to recover its costs so that it can meet its obligation to continue to provide tariffed service as mandated by the PUA. In addition to Sections 16-112(a) and 16-111(i), discussed above, the tariffs filed by Ameren are subject to all of the Commission's general ratemaking authority in Article IX of the PUA. (220 ILCS 5/9-101 *et seq.*). For example, the procedure for the filing of tariffs, as set forth in Sec. 9-201(b), provides that the Commission is authorized to suspend tariffs and "upon reasonable notice, to enter upon a hearing concerning the propriety of

such rate or other charge, classification, contract, practice, rule or regulation.” Also, the period of suspension shall not exceed an initial 105 days and, at the Commission’s discretion, the period of suspension can be extended for an additional six months. (220 ILCS 5/9-201(b)). The tariffs that were filed by Ameren were indeed suspended by the Commission, initially through July 27, 2005, and then through January 27, 2006. The case was set for hearing and the Commission has an 11 month statutory deadline within which to make a final determination on the tariffs that are before it.

The Commission, under Article IX, “shall establish the rates or other charges, classifications, contracts, practices, rules or regulations proposed... which it shall find to be just and reasonable.” (220 ILCS 5/9-201(c)). Accordingly, in setting rates the Commission must determine that the rates accurately reflect the cost of service delivery and must allow the utility to recover costs prudently and reasonably incurred. *Citizens Utility Board v. Illinois Commerce Commission*, 166 Ill. 2d 111 (1995). In this case, Ameren’s tariffs set forth a mechanism whereby it will purchase power and energy through a competitive process in the wholesale market through an auction. As discussed above, the actual cost of service, in this case, is the market value that will be established through the auction process.

Under Article IX, the Commission has discretion in setting rates. Generally, rates are set through base rates that attempt to recover a utility’s costs by estimating the total revenues necessary to recover its operating costs plus a cost of investor capital. *Citizens Utility Board v. Illinois Commerce*

Commission, 124 Ill. 2d 195, 200-01 (1988). In addition, under Article IX, the Commission has the authority to set rates through automatic cost recovery mechanisms. See, e.g., *City of Chicago v. Illinois Commerce Commission*, 13 Ill. 2d 607, 618 (1958) (affirming the Commission's discretionary authority under Article IX to allow rate recovery of utility's costs through a purchase gas adjustment clause, later codified at 220 ILCS 5/9-220); *Citizens Utility Board*, 166 Ill.2d at 139 (affirming recovery of expenditures related to coal tar clean up through a rider mechanism). In this proceeding, Ameren is proposing that the methodologies in Rider MV be utilized in calculating supply related charges in Ameren's retail tariffs. (Ameren Ex. 4.0, lines 99-128). As discussed above, the Commission has the authority to approve such a Rider.

Taken together, the provisions under Article XVI and under Article IX authorize the Commission to approve the tariffs filed in the instant proceeding.

C. Relationship of Illinois and Federal Law and Jurisdiction

1. FERC Jurisdiction of Wholesale Power Rates and Costs

The Federal Energy Regulatory Commission ("FERC") regulates the sale of wholesale power in interstate commerce under Section 201 of the Federal Power Act, 16 U.S.C.S. § 824 *et seq.*, and as a result, wholesale rates and costs are governed exclusively by the FERC. See, e.g., *New York v. FERC*, 535 U.S. 1, 19-20 (2002); *Miss. Power & Light Co. v. Miss. ex rel. Moore*, 487 U.S. 354, 370 (1988); *Nantahala Power & Light Co. v. Thornburgh*, 476 U.S. 953, 963 (1986). Since Ameren no longer has generating facilities, the power that it needs

in order to be able to supply electricity to its customers under tariffed service has to be purchased at wholesale. The terms of those purchases, including the rates and costs, are reflected in purchased power agreements that are subject to the FERC's jurisdiction. As FERC pointed out in *Central Vermont Public Service Corporation*, 84 FERC ¶61,194 (1998), "a state commission is preempted by federal law from reviewing the prudence of power purchases...and to permit such a review would interfere with the Commission's [FERC's] plenary authority over interstate wholesale rates." *Id.*

Unquestionably, FERC has jurisdiction over wholesale power and rates and because Ameren has to purchase power at wholesale, FERC has exclusive jurisdiction over those transactions.

2. FERC Authority of Wholesale Power Purchase Transactions Between Affiliates

FERC's regulation of wholesale sales of power includes transactions between affiliates. In fact, FERC has established more stringent criteria in instances that involve affiliate transactions. See *Boston Edison Co. Re: Edgar Electric Company*, 55 FERC ¶61,382 (1991) ("*Edgar*"). The *Edgar* standards set forth three methods for demonstrating lack of undue preference to an affiliate: (1) evidence of direct head-to-head competition between the affiliate and competing unaffiliated suppliers in a formal solicitation or informal negotiation process; (2) evidence of the prices that non-affiliated buyers were willing to pay for similar services from the affiliate; and, (3) benchmark evidence that shows the prices, terms, and conditions of sale made by non-affiliated sellers. FERC

expanded the standards in *Allegheny Energy Supply Co., LLC*, 108 FERC ¶61,082 (2004). (“*Allegheny*”).

Recently FERC found that the descending clock auction process approved by the New Jersey Board of Public Utilities met the *Edgar* and *Allegheny* standards in *Public Service Electric & Gas Company and PSEG Energy Resources & Trade LLC*, 111 FERC ¶61,152 (2005). In that case, FERC noted:

[the] underlying principle when evaluating a competitive solicitation process under the *Edgar* criteria is that no affiliate should receive undue preference during any stage of the process. The Commission indicated the following four guidelines will help the Commission determine if a competitive solicitation process satisfies that underlying principle: transparency, definition, evaluation and oversight....[T]he Commission finds that the New Jersey statewide bidding process is an example of a process that meets these guidelines.

Id.

The Illinois Auction Proposal is modeled after the New Jersey auction and, if approved, it too would pass muster under FERC’s *Allegheny* and *Edgar* standards for transactions with affiliates.

3. The Auction is Consistent with Illinois and Federal Law and Policy

As discussed above on page 5, the intent of the Restructuring Law is to promote competition and to be equitable to consumers. The process outlined by Ameren in its tariffs, if approved, will be a transparent process that will be administered by an independent auction manager and have Commission oversight. (Ameren Ex. 2.0, pages 25-26).

The benefits of competition would be brought to Ameren's customers through the competitive bidding and would further the goals of the Restructuring Law. Likewise, as discussed above, FERC regulates the sale of power at wholesale within the framework of the Federal Power Act and recently found that a statewide solicitation such as the auction in New Jersey meets even the more stringent standards established to protect against affiliate abuse as outlined in *Alleghany* and *Edgar*. Thus, the Illinois Auction Structure, if approved, would meet the goals of both the Illinois and Federal law and policy.

**D. Reference to Post-2006 Initiative Reports and Results
Significance of the Initiative**

CCG participated in the Commission's Post-2006 Initiative where more than 10 different proposals were fully vetted for the "procurement and pricing of full requirements electricity service for standard offer customers, including the Illinois Auction Structure proposed by Ameren in this case." (CCG Ex. 1.0, lines 53-57). The Commission's Post-2006 Initiative provided various stakeholders an opportunity to seriously and thoughtfully consider the various options being proposed, which led to the development of a list of 18 attributes of a successful procurement model. Those participating in the Post-2006 Initiative determined that the Illinois auction structure meets those attributes. (CCG Ex. 1.0, lines 64-68).

Thus, the Post-2006 Initiative, as a precursor to the instant proceeding, helped in the gathering and analysis of information on various procurement options. The significance of that information is that it helps develop a complete

and thorough record in the instant proceeding, which in turn helps the Commission in formulating an informed decision.

IV. SUFFICIENCY OF THE COMPETITIVE MARKET

A. Markets' Relationship to Auction Process

As discussed in the testimony of CCG witness Smith, if Ameren's auction proposal is approved, there will be substantial participation by suppliers of electricity that will lead to a "robust competitive process". (CCG Ex. 1.0, lines 93-96). As Mr. Smith explained during cross-examination, his testimony is based on the participation of CCG in other competitive procurement processes that have occurred, especially in the eastern PJM market. Mr. Smith explained that potential bidders are interested in the product, know how to price it and that competition brings suppliers to the process. (Smith, Cross Tr., p. 751). As a result, the auction process will ensure that Ameren procures power and energy in "the most cost-effective manner." As Mr. Smith further noted, "there are always going to be...customers who do not or cannot go out to the market themselves and seek a competitive price. This [the auction] brings that product directly to them....and...it creates downward pressure on prices." (Smith, Cross Tr., p. 752).

If the auction process is approved, the robust participation by suppliers will lead to competitive market prices for the cost of power and energy and bring the benefits of competition to Ameren's customers.

B. Other Jurisdictions' Experiences with Competitive Electricity Procurement

As noted earlier, Ameren's proposal is modeled after the New Jersey auction process. CCG has been providing wholesale full requirements electricity service to utilities in the States of Maine, Massachusetts, New Jersey and Maryland. In addition, CCG was active in the design of the procurement process in New Jersey. (CCG Ex. 1.0, lines 32-44). CCG urges the Commission to consider experiences of other jurisdictions that have an impact on suppliers willingness to participate in the procurement process and thus are key to bringing customer benefits. Those experiences relate to expedition and certainty. Specifically, the New Jersey Board of Public Utilities ("New Jersey BPU") and the Public Utilities of Ohio, reviewed and rendered auction results within two business days of completion of the auction. In addition, the New Jersey BPU focused its post auction review on mechanical aspects of the auction. It also considered whether there was "evidence of collusion, gaming or market anomalies that would call into question the competitiveness of the bidding process." (CCG Ex. 1.0, lines, 162-167).

CCG witness Smith, in his testimony, urges the Commission to consider rendering a decision on the auction results as expeditiously as possible and to consider making that determination within two business days rather than three as proposed. (CCG Ex. 1.0, lines 195-196). Also, Mr. Smith urges the Commission to adopt a post auction review that is similar in scope to that which the New Jersey BPU adopted in its Order.² (CCG Ex. 1.0, p. 6). As Ameren witness Mr.

² See *New Jersey BPU Docket No. E004040288*, 2/16/05, pp. 3-4, CCG Exhibit 1.1.

Nelson noted, “the almost immediate approval of auction outcomes is also consistent with the approval process in other restructured states.” (Ameren Ex. 2.0, lines 568-570).

CCG urges the Commission to approve a two business day post auction consideration of the auction results and to adopt a post auction review that is similar in scope to that of New Jersey.

V. AUCTION DESIGN ISSUES

F. Date of Initial Auction

Ameren initially proposed that the auction be held in May. (Original Sheet 266 of proposed Rider MV). In its rebuttal testimony, Ameren proposed that simultaneous auctions be held within the first 10 days of September. (Ameren Ex. 10.0, lines 326-327). CCG witness Smith testified in his Direct testimony that a May auction would be better because it would provide “sufficient time, subsequent to the initial auction, for the utilities, winning suppliers and the Midwest ISO and PJM to ensure that all of the operational details associated with providing service...are in place.” (CCG Ex. 1.0, lines 128-132). Notwithstanding its preference, CCG does not object to a simultaneous September auction, but prefers a May auction. (CCG Ex. 2.0, lines 35-43).

K. Regulatory Oversight and Review

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

The structure of the auction process incorporates Commission involvement before, during and after the auction.

Before the auction, the Commission, within the framework of the PUA as discussed above, is authorized to review Ameren's proposed tariffs through the hearing process that is currently under way. That process involves filing testimony, taking evidence, and filing briefs for the purpose of developing a full and complete record that would assist the Commission in evaluating the tariffs filed by Ameren. At the conclusion of this process, the Commission will presumably enter an order approving or modifying the proposed tariffs based on that record evidence. If the Commission approves Ameren's proposal, with or without modifications, there will be rules in place that will govern the auction and that will allow Ameren to recover its prudently incurred costs.

During the auction, Ameren's proposal calls for Commission monitoring of the auction through Staff and an Auction Advisor. Each would submit independent reports to the Commission by the "end of the business day following the Auction Completion Date." (Ameren Ex. 11.0 Revised, lines 1207-1212). Ameren's proposal further call for a prompt Commission review of the auction results and to either confirm or initiate an investigation or complaint concerning the auction results. (Ameren Ex. 2.0, lines 458-463, 548-552).

After the auction, Ameren's proposal calls for informal workshops that would provide parties with an opportunity to discuss changes to the "auction process or rate related issues." (Ameren Ex. 4.0, lines 277-281). There is nothing in Ameren's auction proposal that would diminish the Commission's authority under the PUA to examine the auction process by initiating a

proceeding or by other mechanisms permitted by law for the purpose of improving the auction process for future auctions.

2. Post Auction Commission Review of Results

CCG has suggested that the Commission consider adopting a post auction review that is similar to the one adopted by the New Jersey BPU. (See page 14 above). By defining the scope of the post auction review so that it focuses on ensuring that the Commission's approved auction process is followed and that no "anomalies were found in the bids or process that would call into question the competitiveness of the bids received," the potential bidders would have confidence that the auction will result in executed SFCs. (CCG Ex. 1.0, lines 145-149). This type of certainty would encourage suppliers to participate in the bidding process resulting in benefits to consumers. Therefore, CCG continues to urge the Commission to adopt a scope for its post auction review that is similar to that adopted by the New Jersey BPU.

L. Supplier Forward Contracts

3. Proposed Clarifications and Modifications Accepted by Ameren

CCG made several suggestions requesting clarifications and modifications to the SFCs. Ameren accepted the following:

- Ameren accepted CCG's suggestion that Section 5.4.e be changed so that when multiple agreements are in existence between the parties, the Non-Defaulting Party as well as Ameren would calculate the termination payment. (Ameren Ex. 11.0 Revised pages 4-5);

- Ameren accepted CCG's suggestion that Section 5.4.e be changed so that when there is termination of one SFC between Ameren and a supplier because of default, that all SFCs between the same two parties be terminated. (Ameren Ex. 18.0, pages 3-4);
- Ameren accepted CCG's suggestion that Section 15.13 be modified requiring parties to provide copies of any applicable tax exemption certificates. (Ameren Ex. 11.0 Revised, p. 8);
- Ameren accepted CCG's suggestion that Section 13.2 of the form SFC be modified in order to remove what appears to be an inconsistency. (Ameren Ex. 11.0 Revised, pp. 8-9).

4. Proposed Clarifications and Modifications Not Accepted by Ameren

Ameren did not accept one of the suggested modifications made by CCG.

- CCG suggested that Section 15.14 of the form SFC be modified to include language that would incorporate a mechanism for the Commission to determine whether any new taxes that may be imposed on suppliers should ultimately be borne by ratepayers. The language proposed by CCG is the same language as in the New Jersey BGS Supplier Master Agreement. (CCG Ex. 1.0, p. 9).

This language is intended to provide a mechanism for the Commission to review any new tax that could be imposed on a supplier and determine whether that tax should be passed on to customers. It is a matter of risk allocation for suppliers; adding this language to the SFC will provide suppliers with a measure of comfort that they may not bear unknown tax liabilities. The imposition of such a tax on suppliers is a real possibility: as Mr. Smith noted during cross-examination, for instance, "there's a new commercial-activity tax in Ohio that could land – and it's still being analyzed – on a wholesale supplier of electricity." (Smith Cross, Tr. p. 753). To the degree that a new tax could potentially be

imposed on wholesale suppliers, there should be a mechanism to address that issue and CCG urges the Commission to adopt such a mechanism.

VII. TARIFF AND RATE DESIGN ISSUES

B. Matters Concerning Rider MV

4. Rider MV- Retail Customer Switching Rules

a. Enrollment Window

i. Duration of Window

CCG's observation in its testimony with regard to the duration of an enrollment window is that since the BGS-LFP customers will have a period of time within which "to choose to take the BGS-LFP service...it is likely that the generation supply rates for BGS-LFP customers will be higher as suppliers will likely price an auction premium into their bids to account for this optionality." (CCG Ex. 1.0, lines 84-88). It should be noted that CCG does not take a position as to the duration of the enrollment window and only makes an observation that the duration could impact price.

C. Additional Tariff and Rate Design Issues

1. Staff's Rate Increase Mitigation Proposal

As CCG understands it, Staff proposed (Staff Ex. 6.0) a "rate moderation plan" wherein after the auction and after the delivery service rate case, if the retail rate increased by more than a certain threshold percentage for any customer in the below 1 MW supply group, then the retail rate of that group

would be reduced to the threshold amount. The retail rates of all of the other below 1 MW customers would then be increased in order to meet Ameren's revenue requirements. (Staff Ex. 6.0, pp. 19-21). CCG's concern about the proposed rate moderation plan is its potential impact on the migration analysis. In preparing their bids, suppliers assess the risk of migration from bundled service to competitive supply and from competitive supply to bundled service and account for that risk in their prices. Since there will be uncertainty as to the moderation plan until after the auction, the migration analysis cannot be completed before the auction. This adds an additional level of uncertainty which cannot accurately be modeled before the auction and thus adds an additional risk premium. (CCG Ex. 2.0, pp. 4-5).

In addition, CCG believes that there is no need to have a plan to artificially "moderate" the bundled rates of customers after completion of the auction or to soften the impact of any potential "rate shock." The Illinois Auction Proposal is designed to generally ensure that the proper price signal is developed through the competitive bidding. (See *discussion*, CCG Ex. 2.0, p.7). The resulting rates would therefore be the "actual operating electricity market as it exists at the time of the auction." (CCG Ex. 2.0, lines 201-202).

Nevertheless, should the Commission approve a rate moderation plan, then CCG requests that the Commission hold the following principles inviolate: First, the moderation plan cannot impact the generation prices. All winning bidders must be paid the auction clearing price applicable to the tranches they are selected to provide. (CCG ex. 2.0, lines 219-221).

As discussed earlier, the FERC has exclusive jurisdiction over wholesale costs or rates and therefore the Commission cannot revise the rates agreed to by wholesale suppliers without being in violation of federal law. (See *Nantahala Power & Light Co. v. Thornburgh*, 476 U.S. 953, 963 (1986)). In addition, if there is any risk that suppliers will not be paid the auction clearing price, it is very likely that they will decline to participate in the auction. (CCG Ex. 2.0, lines 221-222). Also, any moderation plan should not create uncertainty for potential and actual bidding suppliers. Uncertainty increases risk which tends to increase prices. “Any moderation plan should thus operate in such a way that the full retail prices of affected bundled customers can be calculated for various auction generation price results—i.e. the “rate prism” is established and fixed—prior to the commencement of the auction and such prices will not change after completion of the auction.” (CCG Ex. 2.0, lines 224-229).

CONCLUSION

Constellation Energy Commodities Group, Inc., is involved in this proceeding because it fully supports the Illinois Auction Process. It provides wholesale full requirements electricity service to a number of entities, including distribution utilities and has been active in offering that service in Maine, Massachusetts, New Jersey and Maryland and it is a potential bidder in the Illinois Auction Process.

The Illinois Auction Proposal is designed to produce market rates through a competitive auction process that would in turn bring the benefits of competition to Ameren's customers.

Constellation Energy Commodities Group, Inc., urges the Commission to approve the proposed tariffs filed in this docket and also suggests that the proposed tariffs be revised to: Define the scope of the post auction review similar to the way the New Jersey Board of Public Utilities defines its post auction review; and, make a final determination on the auction results within two business days of the auction being completed as does the New Jersey Board of Public Utilities. Constellation Energy Commodities Group, Inc., also suggests that the Commission direct Ameren to revise the form Supplier Forward Contract to include a paragraph in Section 15. 14 which would establish a mechanism for addressing cost recovery of any new taxes that may be imposed on suppliers. Finally, consistent with Constellation Energy Commodities Group, Inc.'s comments herein, to the extent the Commission approves a rate moderation plan, such a plan must not impact the prices paid to auction participants and such a plan should not add additional uncertainty into the auction process.

WHEREFORE, Constellation Energy Commodities Group, Inc., respectfully requests that the Commission enter an order consistent with the recommendations outlined herein.

Respectfully submitted,

**CONSTELLATION ENERGY COMMODITIES
GROUP, INC.**

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