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d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP (collectively, “Ameren”) with the Commission on February 28, 2005.

### **OVERVIEW OF THE COALITION OF ENERGY SUPPLIERS**

The implementation of Ameren’s proposal will directly impact the Illinois *retail* electric market. Although Ameren’s proposal details Ameren’s acquisition of power in the wholesale market by use of a descending clock, vertical tranch auction, the rules governing the auction and the nature of the wholesale products included in the auction will directly affect the products and services offered to retail customers. The Coalition of Energy Suppliers was created by companies that understand this indivisible link between wholesale procurement by electric utilities for their bundled service customers and the retail electric market.

The Coalition’s objective is to advocate measures that foster the development of competitive (retail and wholesale) electric markets throughout Illinois. It includes three of the largest, most active retail electric suppliers (“RESs”) in Illinois and two companies that intend to enter the Illinois retail electric market. In both the instant proceeding and in the procurement proceeding of Commonwealth Edison Company (“ComEd”), ICC Docket No. 05-0159 (the “ComEd Docket”), the Coalition presented the testimony of five witnesses:

- **Philip R. O’Connor**, Ph.D., Vice-President for the Illinois Market for NewEnergy, testified regarding the auction structure, wholesale and retail products, as well as competitive market and regulatory developments relevant to the Commission’s consideration of Ameren’s auction proposal;
- **Mario A. Bohorquez** of NewEnergy and **Wayne Bollinger** of PES, both wholesale procurement managers for their respective companies, testified regarding the appropriate date for the initial auction, as well as the length of the enrollment window; and

- **John Domagalski** of NewEnergy and **Richard S. Spilky** of MidAmerican, both directors of retail product development for their respective companies, testified regarding Ameren's proposed "translation" methodology, the Rider D Default Service Supply Availability Charge, the Supply Procurement Adjustment Ameren's proposed real-time pricing products, the enrollment window, as well as uncollectibles as a supply-related cost.

Rather than filing separate, similar briefs, the members of the Coalition have agreed upon the arguments set forth in the instant brief. Additionally, some members of the Coalition believe that further changes are necessary to improve Ameren's procurement proposal. Those Coalition members are filing separate initial briefs in support of their additional proposed changes.

## **I. EXECUTIVE SUMMARY**

### **THIS PROCEEDING IS AN EXTREMELY IMPORTANT OPPORTUNITY FOR THE COMMISSION TO FINALLY ACHIEVE COMPETITIVE ELECTRIC CHOICE FOR CUSTOMERS IN THE AMEREN SERVICE TERRITORIES**

This docket is an extremely important one for consumers, utilities, and other market participants. It offers the opportunity for the Commission to take a crucial step in bringing to customers in the Ameren service territories levels of competitive choice reasonably comparable to those that exist and that are likely to increase in the ComEd service territory. The Commission is on the path to completing the initiative it undertook in early 2004 to prepare for the post-2006 period and continuing its movement toward appropriate reliance upon competitive markets to provide safe, reliable, and reasonably-priced electric services. However, in this proceeding, that outcome can be achieved only by the Commission directing Ameren to halt its long-running practice of obstructing and delaying the development of competitive markets, and ordering Ameren instead to take perfectly reasonable steps to foster competition.

The record amassed in this docket is no less compelling than that developed in the parallel ComEd Docket, which spurred ComEd to propose a revised procurement proposal that

is, in almost all respects, consistent with the two key standards that the Coalition set forth at the outset of this proceeding: Customer Focus<sup>1</sup> and Market Reliance.<sup>2</sup> Significantly, Ameren has refused to revise its procurement proposal to include an improved design of auction products that recognizes the realities of the dynamics and structure of the retail markets as demonstrated in these proceedings.

Ameren's current proposal, little changed from its original proposal despite the collapse of its own arguments in important respects, is now inconsistent with ComEd's revised procurement proposal. ComEd's current proposal is more in keeping with applicable law and the Coalition's policy standards. Ameren's proposal falls seriously short in several respects and should be revised by the Commission. For example:

- Ameren improperly persists in including customers between 400 kW and 1 MW of demand in the blended, multi-year auction product group. Ameren has not revised this portion of its proposal even though the Coalition has empirically demonstrated that switching behavior in that group of medium-sized commercial customers is more similar to that of business customers above 1 MW in demand than to that of residential and small business customers with whom the 400 kW – 1 MW group would be lumped by Ameren. Modifying Ameren's proposal as recommended by the Coalition, would have the additional benefit of making the customer groupings across ComEd and Ameren more similar in their characteristics for the contemporaneous statewide auction.
- After refusing to combine the 400 kW – 1 MW customers with their kindred group of greater than 1 MW customers, Ameren compounds the error, virtually ensuring higher rates to residential customers, by rejecting use of a migration risk premium adjustment.

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<sup>1</sup> Dr. O'Connor explained that the first overriding principle which should guide the Commission in its evaluation of the auction procurement methodology proposed by Ameren is "Customer Focus." (*See* CES Ex. 4.0 at lines 66-69.) 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.*)

<sup>2</sup> The "Market Reliance" principle was succinctly enunciated by Ameren'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." (Ameren Ex. 12.0 at lines 370-73. *See also* CES Ex. 4.0 at lines 69-77.)

ComEd had included such an adjustment prior to its decision to place the 400 kW – 1 MW customers with those between 1 MW and 3 MW of demand. The obvious and unavoidable result of Ameren’s approach would be to shift the cost of migration risk to residential customers. The Commission can avoid this problem easily either by use of a migration risk premium allocation factor or, better yet, by applying the single-year auction product to all customers over 400 kW.

- Ameren is sticking to its proposed 30-day enrollment window. Ameren continues to advocate this position in spite of (1) the obvious problems it presents for customers considering alternative supply; (2) ComEd’s willingness to provide for an 50-day period in the initial auction; and (3) the empirical evidence demonstrating that the longer 75-day ComEd enrollment window better facilitates the development of a competitive retail electric market.
- Ameren also insists on maintaining that the Commission should authorize it to impose a non-cost-based fee on customers who purchase supply from RESs. Under its proposed Rider D, Ameren seeks to assess customers who choose alternative supply from a RES a charge for an hourly supply service that those customers may not want and may never use. Ameren has mischaracterized this “non-bypassable” Rider-D fee as “insurance” when it bears no resemblance, theoretically or legally, to insurance. The Coalition has explained that the Rider-D fee is “unduly discriminatory, unreasonable, and unjust.” Unfortunately, such a proposal now is all too typical of Ameren.

In short, the Coalition respectfully requests that the Commission direct Ameren to revise its proposal so as to adopt the basic form and substance of ComEd’s revised procurement proposal in Docket No. 05-0159, including the revised customer grouping, the revised enrollment window for the BGS-LFP auction product, and the elimination of the non-bypassable Rider-D fee on competitive choice customers.

Additionally, although the ultimate resolution of several issues raised by the Coalition in this docket will occur in Ameren’s yet-to-be-filed general rate case, the Commission should utilize the instant proceeding to provide proper direction and guidance to Ameren and other Illinois market participants. In the instant proceeding, the Commission should ensure that:

- the Supply Procurement Adjustment (“SPA”) 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 Ameren 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;
- 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 real-time (“BGS-RTP”) customers being exposed to wide variability in hourly prices is incorporated into Ameren’s proposed real-time (“BGS-RTP”) products; and
- a proper recognition and treatment of all direct and indirect costs and related capital expenditures associated with serving BGS-RTP customers is incorporated into Ameren’s proposed BGS-RTP products.

By providing guidance on these significant issues, the Commission can assist in realizing an important goal: bringing additional certainty to the Illinois retail electric market – including the Ameren service areas.

## **II. NEED FOR COMMISSION ACTION**

It is clear that as a matter of law and sound public policy, there is a need for the Commission to approve a market-based post-transition procurement methodology for Ameren.

The General Assembly appropriately has 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, 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, 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 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 is required 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.

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

Currently, Ameren’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* Ameren Ex. 2.0 at lines 672-707.) 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).)

Ameren’s proposed procurement process appropriately provides assurance to the Commission that it will have oversight of the procurement process. The Commission’s involvement will further ensure that the resulting wholesale rates that are produced through the auction process are just and reasonable.

Thus, although the Coalition disagrees with some aspects of Ameren’s competitive procurement proposal, this Coalition believes that proposal appropriately incorporates aspects of the competitive goals of the General Assembly and provides for Commission pre-approval, oversight, and evaluation of the wholesale prices that emanate from the auction prior to the resulting “market values” becoming the costs that Illinois customers bear. 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**

Enactment of 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, RESs, governmental agencies, and other interested parties.

The Choice Law has proven to be flexible and durable. (*See* CES Ex. 1.0 at line 921.) Credit is due to the General Assembly for having taken the time to produce a measure that many parties were able to contribute to and to support. (*See* CES Ex. 1.0 at lines 922-24.)

#### **The Directive To Promote Competition**

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, the General Assembly has 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.

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 choice. Consumers will have meaningful choices and reasonable opportunities to achieve savings over the rates derived through a traditional rate of return regulatory process only through Commission action that continues to foster a competition-enabling environment.

#### **The Directive To Set Market-Based Rates**

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 136-41.) The Choice Law further 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).) The auction proposed by Ameren would yield such energy contracts. (*See* CES Ex. 1.0 at lines 142-43.)

As Coalition 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 131-34.) The auction method also should improve the calculation of the MVEC component of the Power Purchase Option ("PPO") rates that Ameren must continue to offer after the transition period in some of its service territories. (*See id.* at lines 134-36.)

**Conclusion: The Instant Proceeding Is Critical To Achieving The Goals Of The Choice Law**

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.

**D. References to Post-2006 Initiative Reports and Results**

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. (*See* CES Ex. 1.0 at lines 78-80.) Coalition members participated in the Initiative's Procurement Working Group, and the framework for the Coalition's views is informed by the members generally subscribing to the efficacy of an auction procurement method. (*See id.* at lines 83-85.) The results of those workshop discussions indicated that the auction approach, in general, has the fullest complement of the desirable procurement characteristics that were identified by the Initiative participants.<sup>3</sup> (*See id.* at lines 80-83.)

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<sup>3</sup> 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 86-88.)

#### **IV. SUFFICIENCY OF THE COMPETITIVE MARKET**

##### **B. Other Jurisdictions' Experiences With Competitive Electricity Procurement**

The Commission should consider the experience of New Jersey with its auction model and Maryland with its request for proposals (“RFP”) model in evaluating the Coalition’s proposed customer grouping for annual products and comparing it to Ameren’s proposal.

Currently, the New Jersey Board of Public Utilities (“NJ Board”) places the load of all customers with a peak load of 1.25 MW or greater in the hourly priced auction. (*See* CES Ex. 4.0 at lines 474-78.) This “Commercial and Industrial Pricing” (“CIEP”) rate class is only offered an hourly priced utility product.<sup>4</sup> Customers under 1.25 MW are offered a blended product made up of one- and three-year wholesale auction products. (*See id.* at lines 477-78.)

Since June 1, 2005, most Maryland business customers over 600 kW have been only offered an hourly-priced utility product. (*See id.* at lines 484-91.) Starting January 1, 2006, all customers over 600 kW will be offered only an hourly-priced utility product. Business customers less than 600 kW will still be offered a one or two year fixed-price utility product after January 1, 2006. Residential customers will continue to be offered a retail product based on a layered wholesale portfolio that consists of one-, two-, and three-year wholesale contracts that are acquired in an annual RFP that is similar in many respects to an auction. (*See id.* at lines 488-91.)

In New Jersey, business customers offered the hourly-priced utility product have experienced little difficulty in arranging fixed-price service from RESs. (*See id.* at lines 495-

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<sup>4</sup> The NJ Board is currently deliberating whether to expand the CIEP rate class to include all commercial and industrial customers over 750 kW. The NJ Board will decide this matter by November 2005, with an effective date of June 1, 2006.

505.) As of June 2005, only 15.62% of peak load in the CIEP rate class is served by the hourly priced utility product. Most of this peak load has been affirmatively placed in the utility's hourly-priced product; that is, rather than simply defaulting to the hourly rate, customers have chosen hourly pricing as their most desirable option. (*See id.* at lines 498-502.) In Maryland, 86.4% of all large commercial and industrial customer peak load (over 600 kW) is served by RESs, while 38.9% of all mid-sized commercial and industrial customer (60 kW to 600 kW) peak load is served by RESs. (*See id.* at lines 499-502.) As such, the New Jersey and Maryland experiences, as evidenced by their respective switching statistics, indicate that customers can rely on the competitive market for customized products that address their specific supply needs. (*See id.* at lines 502-05.)

The Commission should consider the competitive procurement models developed by these states and it should know that adoption of the Coalition's customer class products similarly would assist in the furtherance of competition in Illinois.

### **C. Retail Market Conditions**

Unrebutted evidence demonstrated that by year-end 2004, the competitive conditions in Illinois had yielded something on the order of \$1 billion in savings for Illinois' businesses since passage of the Choice Law. (*See CES Ex. 1.0* at lines 1015-18.) 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 prescribing savings relative to embedded costs of generation was justified. (*See id.* at lines 1011-18) 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.

The Commission has played an integral role in the development of the Illinois retail electric market. The Commission's leadership has provided a steady force in the evolution of the competitive market in Illinois. (*See id.* at lines 917-18.) As a general rule, the Commission's decisions during the transition period have helped cultivate an atmosphere in which market participants, utilities, and competitive suppliers have increasingly been able to focus attention and effort on improving commercial conditions and doing business rather than expending resources on contentious regulatory proceedings with uncertain outcomes. (*See id.* at lines 903-08.) For example, the Commission appropriately "ratified" the "Global Settlement" that ComEd, consumer groups, businesses, and RESs negotiated in early 2003. (*See id.* at lines 908-11.) By doing so, the Commission created the conditions necessary for businesses to enter into multi-year retail contracts; enabling businesses, for the first time, to hedge their supply and CTCs for the duration of the transition period, thereby ensuring budgetary certainty. (*See id.* at lines 911-15.)

Indeed, Coalition witness Dr. O'Connor explained that the Commission's positive and reasonably proactive posture in administering has been the Choice Law has been "[t]he most important feature of the Illinois regulatory environment." (*Id.* at lines 895-97.) 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 and generally has chosen a progressive path in decisions regarding competitive market implementation. (*See id.* at lines 897-901.)

The Commission should continue to be vigilant in addressing utility practices that appear to inhibit customer choice and to increase unnecessary transaction costs. The Commission now must step forward to guide the competitive market in the Ameren service territories, to ensure that customers throughout the state can realize the benefits of competition.

**There Has Been Substantial Development Of The  
Competitive Markets In ComEd's Service Territory**

Although the end of the mandatory transition period remains more than a year away, the commercial and industrial competitive market in ComEd's service territory has developed well. (*See id.* at lines 925-28.) As competition continues to develop in Illinois, if the Commission is willing to put an end to Ameren's anticompetitive policies, customers in Ameren's service territories likely will experience competition growth similar to that of ComEd. (*See id.* at lines 365-68.)

Four (4) empirical measures suggest that there has been substantial market development in ComEd's service territory.

The **first** empirical measure is the total portion of load that has moved from bundled service to delivery service. 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 id.* at lines 948-49.) 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.*)

The substantial role of the PPO in the ComEd service territory should not cloud the recognition that customers have demonstrated an appetite for making arrangements other than for service under the traditional bundled tariffed rate.<sup>5</sup> Choosing to take PPO service is indeed a choice to move from traditional bundled service to a contract-based, market priced product. (*See*

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<sup>5</sup> 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 961-63.) From another perspective, ComEd Exhibit 7.6 in ICC Docket No. 05-0159 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 963-67.)

CES Ex. 1.0 at lines 970-71.) As Ameren witness Nelson recognized, the movement of customers to the PPO is evidence that the Choice Act is working. (*See* Nelson Tr. at 140.)

The **second** empirical measure of market development 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. Customers over 1 MW have been especially prepared to consider their energy purchase as a separate matter from delivery. However, this willingness extends to business customers under 1 MW of demand as well. (*See* CES Exhibit 1.4.)

The switching statistics reported by the Commission in its most recent Annual Report to the General Assembly on the Status of Competition in 2004 show that, at the end of last year, on an aggregate basis, over three-fifths, 63.3%, of the usage by customers in the ComEd service area with demands in excess of 1 MW was served through delivery services. (*See* CES Ex. 1.0 at lines 982-86.) The combined figure for ComEd and Ameren is 56.6%. (*See* CES Ex. 1.9.)

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.<sup>6</sup> Coalition 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 1002-07.) Dr. O'Connor explained that, on average, larger customers tend to move toward choice sooner than smaller customers in

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<sup>6</sup> 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.

competitive transitions. (*See id.* at lines 1003-04.) It is likely, however, that with the demise of CTCs, especially class-based CTCs for customers below 400 kW, these customers will exhibit a growing appetite for choice. (*See id.* at lines 1004-07.)

The **third** empirical measure of market development is the dollar savings that customers have realized through competitive supply sourcing compared to price levels in place under frozen rates. 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 id.* at line 1011.) However, the data available from the Commission and on the legislated mitigation factors provide a sound foundation for the estimate. (*See id.* at lines 1012-13.) 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 id.* at lines 1013-18.) 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 is the participation in the market by RESs competing against each other. (*See id.* at lines 943-44.) 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, of which three 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>.)<sup>7</sup> Although 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 id.* at lines 1063-71.)

One good indicator of the activity in the market can be seen in the reports made public each summer by the Mid-America Interconnected Network (“MAIN”).<sup>8</sup> Information extracted and summarized from the MAIN reports for 2001, 2002, 2003 and 2004 shows a significant distribution of load responsibilities for the various RESs over time. (*See* CES Exhibit 1.12.) Competitive activity among RESs for customer load in the ComEd service territory 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.

Thus, as a backdrop to its consideration of the instant proceeding, and as supported by the record in the instant proceeding, the Commission should recognize that many aspects of the retail electric market in ComEd’s service territory are working very well and already are delivering benefits to consumers. The Commission should apply the experiences from the ComEd service area while transitioning to a post-2006 procurement process, so that all Illinois consumers -- including those in Ameren’s service territories -- can directly receive the benefits of competition.

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<sup>7</sup> As of August 30, 2005 the list had grown to a total of eighteen (18) RESs.

<sup>8</sup> 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.

### **Competition Has Failed To Develop In The Ameren Service Territories**

There are several reasons that competition has failed to develop in the Ameren service territories. As Coalition witness Dr. O'Connor explained, "None of these reasons should be new to the Commission, as most have been recognized by the Commission in certain reports issued to the General Assembly or raised in other dockets . . . ." (CES Ex. 1.0 at lines 374-76.) The reasons include, but are not limited to, the following:

- Retail tariff terms and conditions and business practices that have acted to impede the development of customer choice, such as:
  - the inability of a RES to obtain all PPO pricing data elements, including transmission and ancillary services and the daily load profiles used in the AmerenIP service territory (since they change daily), makes modeling of the MVI extremely difficult for RESs.
  - lack of timely response to RESs and/or customers in providing the PPO calculations which determines their CTC and PPO eligibility;
  - a very short window to shop, especially with regard to the multi-year transition charges in AmerenIP;
  - transition charge and PPO information was not available on AmerenIP's website for all customers; and
  - lack of uniformity in switching processes and business practices related to obtaining the customer data necessary to serve retail load.
- Transmission reservation policies and practices that have impeded the development of customer choice; and
- Extremely onerous energy imbalance provisions.

(*See id.* at lines 377-93.)

Thus, the lack of competitive development in the Ameren service territories is neither merely a chance result nor the simple effect of low bundled rates in those service areas. (*See id.* at lines 395-97.) Rather, much of the difference between competitive development in the

ComEd service territory versus development in the territories of Ameren derives from explicit utility policies and practices. (*See id.* at lines 407-19.) Although Ameren has made some progress recently to address some of these issues, the lack of competition in the Ameren service territories, combined with the reasonable recommendations herein provide a compelling case for the Commission to impose conditions upon its approval of Ameren's proposal in the instant proceeding. (*See id.* at lines 399-403.)

After over five (5) years of customer choice implementation, the instant proceeding provides the Commission with an opportunity to bring the benefits of both wholesale and retail competition to customers in the Ameren service territories. Acting now is necessary so that consumers experience exactly what the General Assembly intended -- a meaningful transition to vibrant competitive wholesale and retail markets. (*See id.* at lines 410-412.) Whereas ComEd has worked throughout the transition period to develop tariff proposals and business practices that ostensibly support open access and simplified processes for RESs, Ameren, by contrast, has maintained business practices that hinder the development of competition in their respective service territories. (*See id.* at lines 412-16.) The end of the transition should also be the end of institutional obstacles, intended or inadvertent, that frustrate customer choice. (*See id.* at lines 416-19.) No doubt, the yet-to-be-filed Ameren general rate case will present a key opportunity for the Commission to demolish these obstacles once and for all.

## **V. AUCTION DESIGN ISSUES**

### **F. Date of Initial Auction**

Although Ameren originally proposed a May 2006 date for the initial auction, Ameren now suggests that the Commission conduct the initial auction in September 2006. (*See Ameren Ex. 2.0 at lines 362-63; Ameren Ex. 10 at lines 326-27.*) The Coalition has explained why

Ameren had it right the first time: it would be beneficial for the initial auction to take place in May 2006. Alternatively, it would be reasonable for the Commission to accept Staff's original proposal, and direct that the initial auction take place in July 2006.<sup>9</sup>

As Coalition 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 line 211-15.) Accordingly, an initial auction date in May or July 2006 would be appropriate.

Ameren has put forth just two assertions to justify its revised proposal for a September 2006 initial auction: (1) waiting allows more time to prepare for the auction; and (2) waiting will yield a "more accurate" price. The Coalition has addressed each of these assertions and has offered at least three (3) independent reasons why the Commission should conduct the initial auction well before September 2006. In short, an earlier auction will: (1) benefit consumers; (2) allow additional time to address any auction problems that arise; and (3) add much-needed certainty to the market. (*See* CES Ex. 1.0 at lines 217-56.)

### **There Is No Technical Reason To Wait Until September**

There are no "technical" reasons that would justify a delayed initial auction date. When pressed, Ameren admitted that there is no technical reason to wait until September. (*See* Nelson Tr. At 142.) Indeed, Ameren's own analysis suggested that a May 2006 auction date was workable. (*See* Ameren Ex. 10.0 at lines 302-10; Nelson Tr. at 142.)

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<sup>9</sup> In the ComEd procurement proceeding, the Coalition noted that a September 2006 initial auction might be reasonable in light of ComEd's other proposed changes. While the Coalition does not object to the idea of the Ameren and ComEd auctions being conducted contemporaneously, the Coalition continues to believe that the idea of holding the auction earlier still has substantial merit.

The record and the experience in other states demonstrates 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. As Ameren noted, to a great degree, its proposed auction rules and related processes follow closely or duplicate those that are already in place in New Jersey, thus providing a road map for Illinois. (*See Ameren Ex. 10.0 at lines 694-713; Nelson Tr. at 124.*) Staff witness Schlaf explained that the first two (2) New Jersey auctions were held approximately six (6) months prior to the initial delivery date. (*See Schlaf Ex. 5.0 at lines 408-22.*) Ameren witness Nelson admitted that there are no technical reasons to justify an auction date any later than July: “[it will take] six months from the Commission Order to the auction date to really do it right.”

Thus, assuming that a final order is issued by the Commission 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. A total of eight (8) months for process set up, advertisement, and supplier training simply is not necessary.

**A May Auction Would Be Subject to the Lowest Price Volatility and Risk**

The Coalition researched the empirical data and debunked Ameren’s assertion that increased supply shortages in July versus September would be more likely to result in increased July price volatility. (*See Nelson T. at 147. But see CES Ex. 5.0 at lines 281-329.*) The Coalition’s unrebutted research revealed that wholesale power prices are not more volatile in July than in September. The data also demonstrates that a May 2006 initial auction, as proposed

by the Coalition, would be subject to the lowest price volatility and lowest risk. (See CES ex. 5.0 at lines 288-303.)<sup>10</sup>

The decision to choose September as the initial auction date should not be based on some unfounded assertion regarding “price accuracy” because, as the Coalition’s research demonstrated, that notion does not always hold true. The initial auction should be conducted in May or July 2006.

### **An Earlier Auction Date Would Benefit Customers**

As Dr. O’Connor explained, 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 217-19.) That being the case, 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. The auction structure likely will require important education and study on the part of these customers. A May or July 2006 auction date would be consistent with promoting opportunities for customer choice.

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<sup>10</sup> The difference in volatility between the July forward contracts and the September forward contracts was less than one-tenth of one percent (0.0008) or 4 cents per MWh. The price data for 2004 indicates that July volatility (1.4%) was the lowest for a next-year (Cal 2005) forward price. The average (Cal 2005 - Cal 2007) July volatility (2.0%) is slightly higher (0.2%) than September volatility (1.8%). Similar data shows that May price volatility (1.6%) is lower overall than July (2.0%) and September (1.8%). Furthermore, the price data for 2005 shows that the May average price volatility (0.9%) is lower than the July average price volatility (1.4%). Obviously, prices have risen over time for a variety of reasons, but the volatility of these longer-term forward contracts has remained fairly constant. (See CES Ex. 5.0 at lines 291-303.)

### **An Earlier Auction Date Would Allow Additional Time To Address Problems**

It is critical that the initial auction be a success and that the market be launched with the least amount of uncertainty. Unknown risks and issues resulting from inexperience could impact the success of the initial auction; therefore, allowing for additional time could help to minimize those potential risks.

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 211-35; CES Ex. 2.0 at lines 145-60.) Although the auction approach being 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 226-29.)

Furthermore, the success of initial auctions in Illinois may be affected by the membership of Ameren and ComEd in two different Regional Transmission Organizations (“RTOs”). (*See id.* at lines 237-56.) 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. (*See id.* at lines 248-51.)

The Commission should approve an auction timetable that grants MISO adequate time to reasonably assess and resolve with PJM any issues regarding the auction. 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. As discussed in section V(F), any such delays in the auction process likely will do customers more harm than good. By setting a May or July 2006 date for the initial auction, the Commission would take an important step in properly focusing MISO on the need to accommodate the auction and to coordinate with PJM if necessary.

Furthermore, these potential risks are heightened in those areas of Illinois in which Ameren recently has begun operating under the MISO with no previous auction experience. (*See id.*) 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. 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.

#### **An Earlier Auction Date Would Promote Market Certainty**

As Dr. O'Connor explained, "deadlines work." (*Id.* at line 237.) By setting a May 2006 initial auction date, the Commission will be encouraging a time frame that will help move all parties in the direction of defining the post-transition rules of the game, thus bringing more certainty to the environment for customer decision-making. (*See id.* at lines 237-41.)

#### **Conclusion: It Would Be Beneficial If The Initial Auction Is Held Prior to September 2006**

Given ComEd's revisions to the other portions of its proposal, if (and only if) the Commission were to order Ameren to adopt similar revisions, it might be reasonable for the Commission to decide that the initial auction should be held in September 2006. However, such a decision should not be based upon unsupported assertions regarding "technical issues" or "price accuracy." Moreover, holding the initial auction well before September 2006 would provide benefits to Illinois consumers, the Commission and other retail market participants.

**G. Common v. Parallel Auction**

**3. Between Ameren and ComEd Products**

In its rebuttal testimony, Ameren indicated that it would conduct its auction "at or near the same time" as ComEd, "within the first ten (10) calendar days of September." (Ameren Ex. 10.0 at lines 326-29.) The Coalition does not object to Ameren and ComEd auctions being conducted contemporaneously. However, the Commission should note 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.

Ideally, to facilitate suppliers' ability to switch between the ComEd and Ameren auctions, there would be symmetry 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 552-67. *See also* Blessing Tr. at 469.) With that objective in mind, customers who have 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 400 kW to 1 MW customer grouping should be treated. ComEd appropriately has grouped those customers with other eligible customers with demands greater than 1 MW in its annual auction product. (*See* ICC Docket No. 05-0159, ComEd Ex. 18.0 at lines 558-68.) Ameren has balked at this combination, based

primarily upon the historic switching levels of these customers. (*See* Ameren Ex. 18.0 at lines 526-69.)

Because the 400 kW to 1 MW customers in ComEd have had a propensity to migrate more akin to that of the 1-3 MW customers in ComEd, such similarly situated customers undoubtedly should be grouped together. (*See* CES Ex. 4.0 at lines 554-57.) Likewise, over 1 MW customers in the Ameren service territories should be grouped with ComEd customers with similar demand. (*See id.* at lines 421-57.) However, the evidence in the record would support the Commission using its discretion to either include or exclude the 400 kW to 1 MW customers in the Ameren service territories.

In the post-mandatory transition period world, given proper auction products and tariff terms and conditions, the Coalition believes 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 id.* at lines 808-11.) 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 and the Coalition is confident that with continued Commission oversight and intervention (if necessary), switching levels similar to ComEd can be achieved in the Ameren service areas. (*See id.* at lines 522-27.) Accordingly, it would be appropriate to group the 400 kW to 1 MW customers together with those customers with demands greater than 1 MW. Indeed, Ameren admitted that it would be improper for the Commission to build incentives into the auction process for Ameren's rates to displace products that easily can be supplied by the competitive retail market. (*See* Ameren Ex. 18 at 394-401.)

Importantly, data shows that the 400 kW to 1 MW customers in the Ameren service territories would represent an insignificant amount of load in a combined auction. (*See id.* at

lines 559-67.) These customers would represent **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.<sup>11</sup> 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 bottom line is that the 400 kW to 1 MW customer group in the ComEd service territory has shown greater total switching activity than even the 1-3 MW group in the ComEd service territory and considerably more than that for all Ameren customers over 1 MW.<sup>12</sup> Nevertheless, it is likely that the 400 kW to 1 MW customers in the Ameren service territories will experience similar switching levels comparable to the equivalently-sized customers in ComEd following the transition period, and therefore these customers should be included in Ameren's BGS-LFP auction. (*See* CES Ex. 4.0 at lines 519-27.)

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<sup>11</sup> That is, the 400 kW to 1 MW customer load in the Ameren service territories 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 563-65.)

<sup>12</sup> 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 572-75.) 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 575-77.) The differences between the 400 kW to 1 MW customer groupings in the Ameren and ComEd service territories with respect to implications for Prism allocations are 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 614-26.) 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 581-84.) 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 584-87.)

## H. Blended, Fixed Price Auction Product

Ameren's proposed customer grouping for its blended, fixed price auction product is unreasonable, unjustified, and anti-competitive. ComEd and Ameren originally proposed virtually identical customer groupings and retail rules. (*Compare* Ameren Ex. 3.0 at lines 56-129 *with* ComEd Ex. 3.0 at lines 496-580.) Throughout its procurement proceeding, ComEd repeatedly revised its proposal to establish a more workable structure, which the Coalition now generally supports. (*See* O'Connor Tr. at 250-52.) However, consistent with its history of anti-competitive practices, Ameren manufactured illegitimate excuses<sup>13</sup> and failed to even consider revisions ComEd made to its proposal.<sup>14</sup> (*See* CES Ex. 1.0 at lines 377-93; Blessing Tr. at 489-90.) To promote the development of the retail electric market throughout Illinois and to further the goal of statewide uniformity, the Coalition respectfully requests that the Commission order Ameren to revise its customer groupings and related retail rules to bring them more in line with those presently being advocated by ComEd in its procurement proceeding.

Specifically, the Commission should direct Ameren to include the 400 kW to 1 MW customer group with those customers over 1 MW in the BGS-LFP annual product auction,<sup>15</sup> and establish an enrollment window that is at least 50-days long. In short, the Commission should

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<sup>13</sup> For example, Ameren improperly asserted that its failure to install interval meters should be accepted as a reason to reject the Coalition's proposal. (*See* Ameren Ex. 15.0 at lines 387-419.) Certainly the Commission should not reward Ameren for failing to install appropriate technology that would benefit its customers and facilitate the development of the competitive market.

<sup>14</sup> Ironically, the reason given by Ameren for its refusal to consider alternatives appeared to be that the switching levels in the Ameren service territories historically have been lower than those in the ComEd service territory. (*See* Blessing Tr. at 489-90.) That, obviously, is not a reason to reject pro-competitive procurement rules; rather, it is evidence of Ameren's historic and current anti-competitive bias.

<sup>15</sup> Given Ameren's asserted concern about its inability to handle what it views as being "auction complexity," it would be reasonable for the Commission to order Ameren to adopt what Coalition witness Dr. O'Connor described as the "Non-allocation Approach." (*See* CES Ex. 4.0 at lines 433-39.) However, the evidence in the record also would support the Commission adopting the "Allocation Approach," which would allocate migration risk among the customer groupings. (*See id.* at 440-43.)

direct Ameren to revise its customer groupings and enrollment window to be similar to those which ComEd presently is advocating.<sup>16</sup>

## **2. Proposed 1-year Fixed Price Product for 400 kW – 1 MW Customers**

Ameren improperly proposes to include the load of customers with demands of 400 kW to 1 MW together with all residential and small business customer load for procurement purposes. The Coalition witnesses have explained that Ameren’s proposal would be detrimental to residential and smaller customers<sup>17</sup> and would harm the development of the competitive market. (*See* CES Ex. 1.0 at lines 530-31; CES Ex. 4.0 at lines 300-06.) Instead, customers with load demands of 400 kW to 1 MW properly should be included in the customer group with those customers with demands over 1 MW in the BGS-LFP annual product auction. (*See* CES Ex. 4.0 at lines 421-43.)

As a counter to Ameren’s asserted concerns about “auction complexity,” the Coalition explained that it would be appropriate to have a single auction for customers with demands greater than 400 kW. (*See id.*) Consistent with Ameren’s stated goal of promoting statewide uniformity in the auction products,<sup>18</sup> the Coalition has further revised its position, and now

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<sup>16</sup> In its surrebuttal testimony, responding to recommendations made by the Coalition’s witnesses, among others, ComEd set forth a revised structure for the customer groupings. (*See, e.g.*, ComEd Ex. 18.0 at lines 553-68.) ComEd’s surrebuttal proposal appropriately recommends that the customer grouping for the annual auction product include eligible customers in both Large Load Customer class (400 kW - 1 MW) and the Very Large Load Customer class (1 - 3 MW). The default products for these customers will vary based upon whether the customer was served by RES supply (default is RES service), PPO or hourly service (default is hourly service), or bundled service (default is the annual product). In ComEd’s Initial Brief, ComEd also advocated the Commission adopt a compromise position, establishing a 50-day enrollment window.

<sup>17</sup> Ameren appears to admit that its proposal would harm these smaller customers. (*See* Blessing Tr. at 481-86.)

<sup>18</sup> As Ameren witness Blessing explained, the more similar the Ameren and ComEd products are, the more likely suppliers are to switch between the ComEd and Ameren auctions. (*See* Tr. at 469; (*See* Ameren Ex. 10.0 at lines 44-65.)

respectfully requests that the Commission direct Ameren to adopt customer groupings and retail rules similar to those presently being advocated by ComEd. (*See* O'Connor Tr. at 250-52.)

Unlike ComEd (which has revised its proposal in response to the Coalition's proposal and other feedback), Ameren has completely ignored the pro-competitive, pro-consumer aspects of the Coalition's proposal. (*See* CES Ex. 4.0 at lines 66 to 118.) Instead, Ameren has offered three (3) misguided assertions in an attempt to justify its improper customer grouping proposal: (1) that Ameren lacks the necessary metering to allow for the 400 kW to 1 MW customers to be served under the annual auction product; (2) that revising the customer groupings would add to the complexity of the auction process; and (3) that the 400 kW to 1 MW customers historically have not taken service from RESs. (*See* Ameren Ex. 11 at lines 482-85; 570-73; Ameren Ex. 15.0 at 390-95.) Ameren's assertions, to the extent they are accurate, do not justify Ameren's anticompetitive, anti-consumer proposal.

**Including The 400 kW – 1 MW Customers  
In The Annual Product Auction Would Promote  
The Development Of Competition In The Illinois Retail Electric Market**

The Coalition presented un rebutted evidence that including the 400 kW – 1 MW customers in the annual product auction would promote the development of competition in the Illinois retail electric market.<sup>19</sup> (*See* CES Ex. 4.0 at 304-06.)

In keeping with the Customer Focus principle advocated by Dr. O'Connor and Ameren witness Dr. Lacasse, the Coalition's proposal would insulate residential and small commercial

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<sup>19</sup> Indeed, many of the arguments given by Ameren witnesses to justify other portions of the Ameren proposal actually support the customer grouping proposal advocated by the Coalition. For example, Ameren witness Blessing testified that the cost premium associated with migration risk should be placed on the customer group that is creating that risk. (*See* Ameren Ex. 3.0 at lines 84-85.) Ameren witness Blessing also properly explained that "if customers desire alternatives to the simple default services provided by Ameren Companies, ARES likely will come to the marketplace to fill these needs." (Ameren Ex. 18.0 at lines 398-400.)

customers from the migration risk premium associated with the 400 kW – 1 MW customers.<sup>20</sup> (See CES Ex. 4.0 at 408-17. See also Blessing Tr. at 493-94.) Similarly, in keeping with the Market Reliance policy principle, the Coalition’s proposal would allow the market to develop the migration risk premium that should exist for customers over 400 kW. (See CES Ex. 4.0 at 410-17.) As Ameren witness Blessing explained, the cost premium associated with the migration risk should follow the customer group that creates that risk. (Tr. at 480.)

Indeed, Ameren has admitted that its proposal would result in a subsidy flowing from residential to non-residential customers in the blended product under its proposal. Ameren witness Cooper attempted to justify the Ameren proposal by asserting: “Considering the typically better load patterns of the non-residential group, it is reasonable to expect that the resultant prices for the non-residential group will be lower than if they had been bid separately.” (See Ameren Ex. 15.0 at lines 429-32.) To the extent this assertion regarding load profiles is true (Ameren claims elsewhere it does not know these customers’ load profiles), it suggests that the residential customers’ price would be lower if there are fewer non-residential customers eligible for the blended product. (See CES Ex. 4.0 at lines 395-406.) Ameren witness Blessing likewise admitted that following the transition period, the 400 kW – 1MW customer group is more likely to migrate to RESs than the residential customer group. (See Tr. at 481.) He also admitted that the Ameren proposal would result in the migration risk premium for the 400 kW to 1 MW

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<sup>20</sup> As discussed in Section VIIB(6)(a) of the instant initial brief, compounding the problems associated with Ameren’s customer grouping proposal is that along with proposing that all customers below 1 MW be included in a single group for the BGS-FP auction, Ameren also has refused to estimate and allocate migration risk premium. (See Ameren Ex. 15.0 at lines 423-37.) The effect of failing to properly recognize the migration risk premium is to shift cost burdens from larger businesses that have higher migration propensity to the smaller business and residential customers that have a lower switching propensity. (See CES Ex. 4.0 at lines 403-06.)

customers being carried on the backs of residential and small commercial customers for over three years. (*See* Tr. at 483-86.)

The Coalition proposal would alleviate these subsidies in great part because any resulting migration risk premium in the BGS-FP would only need to be allocated across customer groups with demands of less than 400 kW. The Coalition approach is consistent with the Market Reliance principle advanced by Ameren witness Dr. LaCasse and Coalition witness Dr. O'Connor (*see* Ameren Ex. 12.0 at lines 370-73; CES Ex. 4.0 at lines 413-17),<sup>21</sup> and would provide a context in which Ameren's apathy toward BGS-FP migration risk premium allocation would be less likely to harm small commercial and residential customers. (*See* CES Ex. 4.0 at lines 413-17.)

As discussed in more detail below, customers between 400 kW and 1 MW of demand have load characteristics and migration potential more akin to customers over 1 MW. (*See id.* at lines 554-57.) That is, throughout the state, customers in the 400 kW to 1 MW customer grouping have had a greater appetite for choice than have customers below that level. (*See* CES Ex. 1.0 at lines 359-61.) Moreover, the level of competition for the 400 kW to 1 MW customers is likely to grow following the transition period, while the prospects for competition for the residential and small commercial customers is less clear. (*See* CES Ex. 4.0 at lines 630-35. *See also* Blessing Tr. at 481.)

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<sup>21</sup> If the Commission were to establish a separate 400 kW to 1 MW customer group in the auction, as was originally proposed by the Coalition, whatever migration risk premium suppliers priced into their bids would be related to and allocated among customers within that group. (*See* CES Ex. 4.0 at lines 408-17.)

Because the Coalition's proposal would better promote the development of competition in the Illinois retail electric market, the Coalition respectfully requests that the Commission order Ameren to include the 400 kW to 1 MW customers in the BGS-LFP annual auction.

**Ameren's Failure To Install Interval Metering  
Is Not A Valid Excuse For Its Anticompetitive Proposal**

Ameren's deployment of interval metering is far behind ComEd's. (*See* CES Ex. 4.0 at lines 313-14.) Apparently, about 90% of customers in the 400 kW to 1 MW group in Ameren's service territories have demand, rather than interval, meters. (*See id.* at lines 314-15.) This is Ameren's primary argument against accepting the Coalition's proposal to extract the load of the 400 kW to 1 MW customer group from the blended auction and place that load into a single-year product auction. (*See id.* at lines 315-18.) However, as Dr. O'Connor explained, Ameren's lack of interval metering for customers in the 400 kW to 1 MW grouping actually further justifies the Commission adopting the Coalition's proposal. (*See id.* at lines 318-19.)

Ameren asserts that the lack of interval meters will make it difficult to advise auction bidders on load profiles of the 400 kW to 1 MW customer group for purposes of a single-year auction product and that this could adversely affect prices. (*See* Ameren Ex. 15.0 at lines 379-419.) Nevertheless, Ameren proposes to lump the 400 kW to 1 MW load in with all residential and smaller business loads, asserting without empirical support that doing so will somehow help to lower overall prices for the blended product auction. (*See* Ameren Ex. 15.0 at lines 429-34. *But see* CES Ex. 4.0 at lines 324-27.) Ironically, Ameren backs into this argument without the benefit of the basic information that it would have if these customers had interval meters. (*See* CES Ex. 4.0 at lines 327-29.) Ameren fails to explain why a lack of information makes this group of customers too pricey on its own, while at the same time does not make this group too

pricey for aggregation with residential and small business customers. In short, Ameren's assumption that this is a pricey group, if true, provides further justification for excluding the 400 kW – 1 MW from the BGS-FP auction.

Nevertheless, despite Ameren's claims, data could be developed regarding the 400 kW – 1 MW customers. As Coalition witness Dr. O'Connor explained, Ameren could develop load profile estimates for the 400 kW to 1 MW customer group based on a 10% sample of such customers with interval meters. (*See id.* at lines 335-42.) ComEd has relied on similar, sample metering for many years and likely could advise Ameren in this regard, especially in the event that the Commission adopts Staff's proposal for a combined Ameren and ComEd auction. (*See id.* at lines 337-39.) Moreover, auction participants likely will apply their own analytical skills to the matter and look to the load profile information provided by ComEd for the 400 kW to 1 MW customers in its area for assistance. (*See id.* at lines 339-42.) Indeed, Ameren witness Blessing knew of no reason why the load profile of the 400 kW – 1 MW customers in Ameren's service territories would be different than similar customers in ComEd's service territory. (Tr. at 478-79.)

Regardless of the precise level of data presently available for the 400 kW to 1 MW Ameren customers, it is clear that those customers (along with whatever uncertainties Ameren claims exist regarding their load profile) should not be included in the multi-year blended product with residential and small commercial customers. That is, once the 400 kW to 1 MW customer group is separated from customers below 400 kW, any migration risk premium that suppliers might include in the blended product auction price would certainly be smaller and easier to handle. (*See CES Ex. 4.0 at lines 347-50.*)

The Coalition respectfully requests that the Commission adopt the Coalition's customer grouping proposal that offers the 400 kW to 1 MW customers a default product based upon a one-year auction product.

**The Coalition's Revised Proposal  
Would Decrease The Complexity Of The Auction**

Ameren wrongly asserted that the Coalition's original modest and straight-forward proposal to include an auction for the 400 kW to 1 MW customers would have added complexity to the auction. (*See* Ameren Ex. 11.0 (Revised) at lines 482-88. *But see* CES Ex. 4.0 at lines 371-78.) Nevertheless, to address Ameren's purported "complexity" assertions, the Coalition modified its proposal, so that the 400 kW to 1 MW customers would be included with the over 1 MW customers in the BGS-LFP product auction. (*See* CES Ex. 4.0 at lines 300-32.)<sup>22</sup> To the extent Ameren still feels that this revised structure was too complex, the Coalition has further refined its proposal to mirror the customer grouping proposal now being advocated by ComEd. (*See* O'Connor Tr. at 250-52.) Further, the Coalition's witnesses have expressed a willingness to work with Ameren to help it better understand how the revised proposal easily can be implemented. (*See, e.g.*, CES Ex. 4.0 at lines 385-88.)

With the Coalition's revised proposal, any asserted "complexity" associated with the implementation of the Coalition customer grouping proposal would be offset by (1) eliminating any customer grouping differences between Ameren and ComEd; and (2) the fact that the debate

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<sup>22</sup> The additional complexity, if it exists at all, is trivial, at best. The only "complexity" contained in the Coalition proposal is that approximately 6% of total Ameren system load, about 2000 GWh per year, would be shifted from the BGS-FP blended auction product to a BGS-LFP style annual auction product. (*See* CES Ex. 4.0 at lines 371-74.)

over whether and how Ameren should include a migration risk premium allocation element in its transition tariff for BGS-FP largely would be resolved. (*See id.* at lines 392-417.)<sup>23</sup>

Finally, with respect to the question of complexity, the comments of Staff witness Dr. Salant are pertinent: “At times, getting the best rates for ratepayers can conflict with the goal of maximizing the probability of regulatory approval, especially when obtaining the best rates for ratepayers involves some risks, or involves a procurement process that appears complex. “ (ICC Staff Ex. 1.0 at lines 2104-08.) In other words, as explained by Coalition witness Dr. O’Connor, “the Commission should focus not on assertions regarding the complexities associated with competing proposals but, rather, on which structure is most beneficial to customers.” (CES Ex. 4.0 at lines 365-67.)

Because the Coalition’s proposal would provide more benefits to customers by properly assigning costs and minimizing the risk of cross-subsidies, the Coalition respectfully requests that the Commission order Ameren to include the 400 kW – 1 MW customer grouping with the over 1 MW customer grouping for purposes of the auctions.

**Historic Switching Levels Should Not Dictate  
The Customer Groupings For The Post-Transition Auction**

The numerous obstacles to choice in the Ameren service areas during the transition period have prevented Ameren switching data from being very instructive for anticipating parallels in post-transition customer behavior between the Ameren and ComEd service territories. (*See* CES Ex. 1.0 at lines 456-59.) Thus, the historic switching figures for the

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<sup>23</sup> As discussed above, the Coalition’s proposal would insulate residential and small commercial customers from the migration risk premium associated with the 400 kW – 1 MW customers while allowing the market to develop the migration risk premium that should exist for customers over 400 kW. (*See* CES Ex. 4.0 at 335-55. *See also* Blessing Tr. at 493-94.)

Ameren service territories are not indicative of the level of switching that is anticipated following the transition period. (*See id.*) Certainly, the Commission should not allow Ameren to use its prior failure to facilitate competition as a reason to prevent a pro-competitive restructuring of its customer groupings in the instant proceeding.

As Dr. O'Connor explained, "If the Ameren companies had embraced customer choice in the same manner that ComEd did, we would have seen much more customer switching in the Ameren service areas during the transition period and greater participation in the Ameren service areas by RESs active in the ComEd service area." (CES Ex. 1.0 at lines 459-63.) However, with the end of transition charges, Ameren's integration into MISO, continued improvements in the wholesale market, appropriate decisions by the Commission in the instant proceeding, and continued Commission oversight and intervention as necessary, Ameren and the Coalition agreed that switching levels will improve. (*See* Ameren Ex. 2.0 at lines 173-77; Nelson Tr. at lines 135-38; CES Ex. 1.0 at lines 463-67.) Indeed, Dr. O'Connor predicted that following the transition period switching levels similar to those experienced in the ComEd service territory can be achieved in the Ameren service areas. (*See* CES Ex. 4.0 at lines 644-46.)

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

(*See* Section V(H).)

**1. Nature of Auction Product and Tariffed Services for 1 MW and Over Customers**

(*See* Section V(H).)

**K. Regulatory Oversight and Review**

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

(*See* Section V(H).)

### **3. Post-Auction Workshop Process**

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 488-90.) 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**

### **A. General Tariff and Rate Design Issues**

### **B. Matters Concerning Rider MV**

#### **2. Rider MV – Definitions**

##### **a. Customer Supply Group Definitions**

(*See* Section V(H).)

#### **4. Rider MV – Retail Customer Switching Rules**

##### **a. Enrollment Window**

Ameren proposes continuing to use an “enrollment window” for a portion of its post-transition rates. As proposed by Ameren, during the enrollment window, customers with demands greater than 1 MW who are eligible for Ameren’s proposed single-year, fixed-price product may register to take that service. Under Ameren’s proposal, customers over 1 MW who fail to act during that enrollment window will be placed on an hourly rate. (*See* Ameren Ex. 3.0 at lines 199-201.) Ameren proposes a 30-day enrollment window. The Coalition does not object

to the concept of an enrollment window generally, and even has endorsed the overall paradigm proposed by ComEd which includes a 50-day enrollment window for customers.<sup>24</sup> However, Ameren, unlike ComEd, has exhibited any flexibility with regard to customizing its retail rules to meet retail customers needs.

The Coalition has proposed revisions to Ameren's customer groupings to make them consistent with those adopted by ComEd. If the Commission were to direct Ameren to make those revisions, it likewise would be reasonable for the Commission to direct Ameren to establish a 50-day enrollment window. However, unless and until Ameren adopts more customer-friendly and competition-friendly rules in its service territories, the Coalition respectfully requests that the Commission direct Ameren to adopt the more well-established 75-day enrollment window. The 75-day enrollment window has proven fair and workable; unless other revisions to Ameren's proposal are made, nothing in this record suggests that a shorter window in Ameren's service territories is either necessary or appropriate.

#### **i. Duration of Window**

In this first year of the post-transition era -- a time in which customers are going to face significantly revised rates and options -- Ameren has proposed a 30-day enrollment window within which customers would have to choose between Ameren's revised products and those offered by RESs. Rather than utilize the well-established 75-day enrollment window modeled

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<sup>24</sup> In its initial brief in its procurement proceeding, ComEd agreed to a 50-day enrollment window for the initial auction in 2006, while recommending a 45-day enrollment window for subsequent auctions. (*See* ICC Docket No. 05-0159, ComEd Initial Brief at 132. In an effort to resolve a disputed issue, the Coalition supports ComEd's newest proposal for the ComEd service territory with ComEd's revised customer groupings, as it strikes a reasonable balance between the competing proposals. Nevertheless, the Coalition continues to believe that in the Ameren service territories, where competition has yet to take hold to the same degree, and given Ameren's proposed customer groups, all customers eligible for the annual product would benefit by the Commission ordering Ameren to adopt either a 75-day enrollment window, or a 50-day enrollment window mirroring ComEd's proposal.

after the terms of ComEd's successful existing PPO product, Ameren has requested permission to institute a much shorter, untested 30-day enrollment window. (*See* Ameren Ex. 3.0 at lines 196-97; Schlaf Tr. at 1331.) The Coalition respectfully requests that the Commission direct Ameren to adopt the 75-day enrollment window or, as part of a comprehensive revision of Ameren's retail rules to make them mirror those now proposed by ComEd, order Ameren to adopt a 50-day enrollment window.

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 only assertion advanced by any party to justify the truncated enrollment window is that there is a theoretical wholesale rate premium associated with a longer enrollment period. Although the Coalition has challenged the basis for that theoretical premium, even if there were a premium associated with providing customers with more time, customers would be better served by paying the premium in exchange for more time to make a decision.

As with other issues in this proceeding, the Commission should be mindful of the General Assembly's direction to the Commission to promote the development of the wholesale and retail market. (220 ILCS 5/16-101A(d).) A reasoned cost-benefit analysis of this issue, with that directive in mind, suggests that the Commission should begin with a presumption in favor of a longer enrollment window. That is, on one hand, if the enrollment window is longer than the bare minimum amount of time customers need to make a decision, there may be a slight theoretical premium included in the models that the wholesale suppliers use prior to entering the auction; a theoretical premium that may not even exist in the price customers pay. On the other hand, if the enrollment window is too short, many customers simply will accept the utility supply option, not because it is the most economical option, but rather because customers lack sufficient

time within the confines of the enrollment window to implement and complete the decision-making steps necessary to evaluate the available alternatives. (*See* CES Ex. 6.0 at lines 282-88. *See also* Blessing Tr. at 482-87.)

### **The Existing ComEd 75-Day PPO Enrollment Window Is Working Well**

In 2003, the Commission replaced a more complicated enrollment process, contained in ComEd's prior PPO-MI tariff, with a 75-day sign-up window for the PPO-MVI tariff. ComEd proposed the 75-day window to the Commission under the terms of what often has been called the "Global Settlement." The PPO-MVI tariff in place today still contains that Commission-approved 75-day enrollment window.

When it originally approved the 75 day enrollment window provision, the Commission noted:

[T]he Commission agrees with Trizec's proposal to allow customers a 75-day window for PPO enrollment, which the Joint Movants also proposed in the March 6, 2003 Motion. **The record evidence supports a finding that the adoption of this proposal will result in tangible benefits to all market participants. One important advantage is that customers will have ample time to make their decisions while suppliers will have time to procure needed supplies.** Therefore, the Commission finds that customers should have a 75-day window to enroll in Applicable Period A PPO service or choose RES-supplied service beginning on the day the MVECs are published.

(Final Order dated March 28, 2003, ICC Docket Nos. 02-0656, -0671, -0672, 0834 (consol.) at 109.) (Emphasis added.)

Importantly, even in the proceedings referenced above, ComEd originally proposed a 60-day enrollment window and then ComEd sponsored testimony supporting the Joint Motion, which included support for the 75-day enrollment window. (*See* CES Ex. 4.0 at lines 164-68.) In the instant proceeding, Ameren has not suggested any changed circumstances that would make it easier for customers or suppliers to act more quickly during the enrollment window. To

the contrary, Ameren admitted that customers will need to be educated about the significant changes in their rate options and structure, a process that likely will consumer considerable time. (See Blessing Tr. at lines 446-47.)

Unless Ameren's proposed customer grouping are revised, the Coalition respectfully requests that the Commission stay with the tried and true approach of a 75-day enrollment window that accords customers proven, workable degrees of freedom for exercising choice.

**Customers Want And Need More Than 30 Days To Make Fully Informed Decisions**

As representatives from Constellation NewEnergy, MidAmerican, and Peoples Energy Service Corporation each testified, customers have unequivocally stated that they prefer a 75-day window or ComEd's proposed 50-day window over a 30-day window. (See CES Ex. 4.0 at lines 124-28; CES Ex. 2.0 at lines 78-86; CES Ex. 6.0 at lines 218-229.)<sup>25</sup> In violation of the principle of Customer Focus, Ameren did not inquire what length of enrollment window its customers would prefer, but instead focused upon the interests and unsupported assertions of wholesale suppliers. (See Blessing Tr. at 496; Ameren Ex. 11.0 at lines 672-74.)

Real world experts from the Coalition explained that business customers, for the most part, do not have personnel or offices dedicated to buying electricity. (See CES Ex. 5.0 (Revised) at lines 90-122.) Therefore, buying electricity is an activity that takes customers outside of their normal processes and is an occasional, rare activity. Many customers simply

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<sup>25</sup> For many customers, the decision to buy electricity is made employing somewhat lengthy committee processes by a board of directors (or similar authority) during monthly meetings. (See CES Ex. 5.0 (Revised) at lines 116-18.) This is especially true of governmental entities, park districts and school districts, hospitals, and many other types of retail customers. (See *id.* at lines 127-33.) Coalition witnesses have presented detailed time lines demonstrating the various steps that customers take before making energy procurement decisions. (See *id.* at lines 137-98.)

need more than 30 days to analyze their electricity choices, move proposals through the corporate or institutional chain of command, negotiate contracts, and, finally, execute purchase transactions. (*See* CES Ex. 3.0 at lines 517-28.)

Historically, competition generally has worked to benefit customers interested in exercising choice, for whom the economics worked under the prevailing regulatory rules, and for whom there have been several RESs similarly interested in serving those customers. (*See* CES Ex. 1.0 at lines 1051-54.) Additionally, many customers hire energy consultants and issue requests for proposals to identify their best supply choice. These practical mechanics of evaluating options and exercising choice, which are all integral to the operation of a competitive market, often take longer than 30 days. The Commission should allow the necessary time for these procurement processes to occur. (*See* CES Ex. 3.0 at lines 517-28.) Moreover, the fact that there will be a new process in place to calculate the market value rates, and the fact that customers will be locked into 17-month supply decisions under Ameren's BGS-FP product further justify providing customers with additional time to select the option which best fits their overall needs. Forcing each customer to evaluate, choose, and consummate its procurement decision in the face of this relatively complex array of options in just 30 days is unrealistic. (*See* CES Ex. 5.0 at lines 201-05.)

Ameren presented no empirical analysis or customer survey to justify its truncated enrollment window. Instead, Ameren witness Blessing made the bare assertion that 30 days is "the appropriate balance." (*See* Ameren Ex. 11.0 at lines 658-59.) Frankly, he is not qualified to make such an assertion. Ameren has little or no institutional experience of its own in dealing with the processes by which customers make their energy supply decisions. Indeed, the terms of the applicable Commission Integrated Distribution Company ("IDC") regulations to which

Ameren subscribers necessarily make any such familiarity, at best, second hand for Ameren. (See 83 Ill. Admin. Code § 452.) Further, the “information” gathered by Mr. Blessing during two (2) private meetings with a few self-selected, extremely large IIEC members, where he “did not receive any specific feedback” (Tr. at 498) should not be relied upon by the Commission as a model for customer behavior and is not reflective of the thousands of business customers in Ameren’s service territory. (See CES Ex. 4.0 at lines 188-201. See also Blessing Tr. at 495-99.) The real world experts from the Coalition -- who have negotiated thousands of retail energy contracts with business customers -- explained that more time is necessary, especially for the enrollment window following the first post-transition auction. (See CES Ex. 5.0 at lines 210-18.)

**It Is Unrealistic To Expect Customers To Pre-negotiate Contracts**

The suggestion has been made that customers and RESs should simply “pre-negotiate” contracts prior to the enrollment window opening. Of course, such pre-negotiation would impose a cost upon customers that should be considered in the overall cost-benefit analysis. However, more importantly, on a practical level, the Commission should recognize that even if customers were fully aware of the shortened enrollment window and fully appreciated the drain that it will place upon the limited resources of qualified experts, RESs, and relevant utility personnel, it is unrealistic to believe that customers will pre-negotiate their energy supply contracts so that they can “plug and chug” the results of the auctions. (See CES Ex. 6.0 at lines 266-73.)

Although market participants will know the Commission-approved structure of the auction, there are a number of “contingencies” that Ameren itself already has identified that could delay approval of the auction or cause the Commission to approve an entirely different structure. (See Ameren Ex. 6.0 at lines 949-1084.)

In short, for many customers, there simply will not be a sufficient amount of certainty in the marketplace to allow them to pre-negotiate and then “plug and chug.”

Ultimately, neither customers nor RESs will have the information necessary to pre-negotiate contracts before the auction occurs. Of course, price is a primary, indeed fundamental, component of any contract, and the “price to beat” will remain unknown until after the auction occurs. (*See* Schlaf Tr. at 1325-26.)

### **Any Premium Is Merely Theoretical**

There is no empirical basis upon which the Commission could conclude that there is a particular risk premium associated with a 75-day window. Indeed, the empirical evidence presented in the instant proceeding suggests that maintaining the existing 75-day sign-up window would not be costly. The only evidence in the record even attempting to quantify this premium was presented by Staff witness Schlaf, who admitted that his analysis merely calculated a theoretical premium that may not actually exist in the prices customers ultimately pay. (*See* Tr. at 1339.)<sup>26</sup>

As an initial matter, the Commission should recognize the real world pricing implications of the enrollment window. To the extent that any asserted “premium” is a legitimate “problem,” the competitive market certainly would solve that problem by offering customers subject to the enrollment window alternatives at a lower cost than the auction price. (*See* CES Ex. 4.0 at lines 218-22.) Ameren witness Blessing admitted that to the extent RESs exist at all in the Ameren service territories, those RESs will act to check any prices that are “too high.” (*See* Blessing Tr.

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<sup>26</sup> Ameren quotes the testimony of one supplier who suggests that a premium exists, but fails to even suggest the “premium” is anything other than miniscule. (*See* Ameren Ex. 11.0 at lines 665-71.)

at 487.) That is, competitive activity among RESs also would provide customers with alternatives to any premiums customers considered unacceptable.

The only credible empirical evidence demonstrates that the costs associated with a longer enrollment window are *de minimus*. Neither Ameren nor ComEd has ever proposed, suggested, supported, accepted, or otherwise entertained any pricing component for calculating PPO charges to account for the enrollment window “option.” (See Nelson Tr. at 286-87; Schlaf Tr. at 1329-30; CES Ex. 4.0 at lines 179-85.) That is, while both Ameren and ComEd now assert that there is a pricing premium difference between a 30-day and a 75-day enrollment period that merits rejecting the current well-operating enrollment window, neither Ameren nor ComEd has ever seen fit to suggest to the Commission any pricing scheme recognizing the price impact of such a window with respect to its PPO tariff. Dr. O’Connor explained that “The MVEC methodology currently in effect has never included an adjustment to the MVEC based upon the length of time of the enrollment window. This is rather obvious in the case of Ameren in which the enrollment windows have ranged between 2 and 45 days. In short, there is no basis upon which the Commission could conclude that the cost of keeping the price open for 75 days is other than negligible.” (CES Ex. 1.0 at lines 725-27.)

In rebuttal testimony, Staff witness Schlaf indicated that he estimated a theoretical “premium” that might be reflected in the auction price if the enrollment window were extended beyond 30 days. He suggested that the price might rise by four tenths of one percent (0.4%) for each additional 10 days the enrollment window is open. (See Staff Ex. 13-0 at lines 147-49.) On cross-examination, Dr. Schlaf and Ameren witness Blessing each recognized that once the actual bidding begins, his theoretical analysis may not prove to be the way that suppliers view this risk. (See Schlaf Tr. at 1326; Blessing Tr. at 503.) As Coalition witnesses Bohorquez and Bollinger

explained, in a competitive environment, those theoretical premiums will be “squeezed out” and will not be reflected in the final prices bid into the wholesale auction. (Bohorquez and Bollinger Tr. at 430-31.) Moreover, as Coalition witness Dr. O’Connor explained, even accepting Staff’s figures at face value, it is a small price to pay to afford customers a meaningful opportunity to evaluate, negotiate, and execute their choices. (O’Connor Tr. at 231-233.)

### **There Are Additional Hidden Costs Associated With A 30 Day Enrollment Window**

There are additional hidden costs associated with a 30-day enrollment window. Only a limited number of qualified energy consultants, knowledgeable utility employees, and experienced RES marketing associates are available to assist customers evaluate their options during the enrollment window. (See Schlaf Tr. at 1335-36.) A shorter window not only virtually ensures higher costs to engage the qualified consultants, it also significantly increases the risk that customers will not be able to obtain the type of customer service necessary to appropriately evaluate procurement options. (See Schlaf Tr. at 1336-37.)

### **A Longer Enrollment Window Would Allow More Time To Correct Mistakes**

A longer enrollment window would allow more time to correct mistakes. Coalition witness Dr. O’Connor explained that it may prove especially important following the first auction to allow time for corrections to be made. (See CES Ex. 1.0 at lines 706-14.) The risk of error in rate calculations and allocations of wholesale costs and the potential negative effect will be particularly acute the first time that a pricing process is implemented live. A longer enrollment window would allow more time for a utility to make the appropriate changes, should an error be discovered during the enrollment window. (See CES Ex. 2.0 at lines 92-94.)

As discussed above in Section V(H) of the instant brief, the Commission should order Ameren to adopt pro-competitive, pro-consumer revision to its proposed customer groupings. If

such revisions are ordered, it would be appropriate for the Commission order Ameren to adopt a 50-day enrollment window, since Ameren's overall would mirror that being advocated by ComEd.

**6. Rider MV – Translation to Retail Charges**

**a. Customer Supply Group Migration Risk Factor**

Ameren appropriately has proposed to “translate” the wholesale prices resulting from the auction into retail rates that it will charge customers. (*See* Ameren Ex. 5.0 at lines 389-652.) The goal of the translation mechanism is to properly allocate costs (higher prices) to those customers who caused those costs (that is, those 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, Ameren recognized that 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. (*See* Ameren Ex. 3.0 at lines 72-78; Blessing Tr. at 482-83.)

Therefore, Ameren's proposed translation mechanism or “Prism” appropriately includes an adjustment to reflect the migration risk within each customer group. (*See* Ameren Ex. 5.0 at lines 655-71.) The translation methodology proposed by Ameren (which can be found in the “Translation to Retail Charges” section of Rider MV – Market Value of Power and Energy), contemplates relative costs associated with electric energy, generation capacity, and ancillary services. The purpose of the translation tariff is to take the wholesale prices from the auctions and, by making certain assumptions, translate the wholesale auction prices into the various retail rates that it will charge its bundled service customers. However, unlike the translation tariff proposed by ComEd in its procurement proceeding, the Ameren proposal would not allocate the

migration risk premium to recognize differing migration potential across customer classes. (*See* CES Ex. 3.0 at lines 93-96.)<sup>27</sup> Taking this step is especially important if Ameren is allowed to keep customers between 400 kW and 1 MW in the BGS-FP blended product group.

The Coalition has recommended that Ameren's proposed Prism be revised to allocate the migration risk premium in a way that properly recognizes these distinctions among customer classes. (*See* CES Ex. 3.0 at lines 88-101.) Ameren has not articulated a persuasive reason for failing to make this distinction.

**Ameren Does Not Provide Sufficient Justification For Not Allocating the Migration Risk Premium Through the Prism**

The Coalition presented un rebutted evidence that failing to properly allocate the migration risk premium would inappropriately shift costs onto smaller commercial and residential customers.<sup>28</sup> Ameren provided the following three responses to address this single concern: (1) Ameren does not absolutely object to a rate moderation mechanism proposed by Staff; (2) the entire load of residential and non-residential customers under 1 MW will be bid as one product; and (3) historically, non-residential switching to RES service has been rather limited in the Ameren service territories. (*See* Ameren Ex. 15.0 at lines 425-37.)

None of these reasons, taken either individually or collectively, provides sufficient justification for not allocating the migration risk premium through the Prism. Coalition

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<sup>27</sup> As explained by Coalition witnesses Domagalski and Spilky, ComEd likewise has included a translation tariff in its auction proposal. (*See* CES Ex. 3.0 at lines 85-101.) ComEd's proposed method for allocating migration risk includes two assumptions that likely improperly assign costs. First, ComEd underestimates the amount of load that is likely to switch from the PPO to a RES if savings were available. That is, it would be appropriate to estimate migration potential for PPO customers at 100%. (Instead of 50% as proposed by ComEd). Second, the volatility of the forward price for a given delivery period should be based upon data from the six (6) month period just prior to the applicable auction (rather than a full year and a half before the auction as proposed by ComEd). (*See* Domagalski/Spilky Direct Testimony, CES Ex. 3.0, ICC Docket No. 05-0159 at lines 161-200, 293-313 (filed June 8, 2005).

<sup>28</sup> Indeed, Ameren witness Blessing agreed with this conclusion. (*See* Tr. at 492-93.)

witnesses Domagalski and Spilky highlighted the following shortcomings in each of the reasons articulated by Ameren for not allocating the premium:

- **Rate moderation mechanism.** An allocation of migration risk premium can and ought to be made irrespective of whether a rate moderation mechanism is put in place. These are different mechanisms, designed to achieve different objectives altogether. A migration risk premium allocation mechanism should result in a more proper assignment of costs. This proper assignment of costs is the appropriate starting point for any rate moderation analysis.
- **Entire load under 1 MW bid as one auction product.** An allocation of migration risk premium can and ought to be made irrespective of whether the entire load of residential and non-residential customers under 1 MW is bid as one product. Just as the Prism – as proposed by Ameren – contemplates the differences in load patterns among customer groups under 1 MW for computing supply charges, it can take into consideration differences in migration risk among customer groups. Ameren has admitted that wholesale suppliers are likely to consider these relative differences in migration risk when formulating their bids. (*See Ameren Ex. [Blessing Direct] at lines 72-85.*) It appears that Ameren witness Cooper misses this point when he states: “it is reasonable to expect that the resultant prices for the non-residential group will be lower than if they had been bid separately.” (*Ameren Ex. 15.0 at lines 430-32.*) Although the Coalition proposal would assign more costs to the larger non-residential customers, such a result is appropriate given the anticipated differences in load patterns and migration risk premium properly attributed to larger, non-residential customers. Thus, the Prism properly should capture the differences in both load patterns and migration risk premiums.
- **Limited switching to RES service.** Ameren acknowledges that in its service territories, limited switching of under 1 MW non-residential customers to RES service has occurred to date. However, this fact is not a legitimate basis for Ameren to oppose the Coalition’s proposal to include a mechanism that would properly

allocate a migration risk premium. In formulating their bids, suppliers likely will look to other retail markets where competition has developed in order to assess the prospective migration potential of potential customers following the end of transition period obstacles to competition in Ameren's territory. It would be appropriate for the Commission order Ameren to utilize the same switching levels, as a percent of relevant class load, as indicated by the ComEd data.

(See CES Ex. 3.0 at lines 169-216.)

For these reasons, the Coalition respectfully requests that the Commission order Ameren to modify its Prism to properly allocate the migration risk premium that suppliers include in their auction bids.

#### **7. Rider MV – Supply Procurement Adjustment**

Ameren's proposed Supply Procurement Adjustment ("SPA") should be revised. Specifically, Coalition witnesses Domagalski and Spilky explained that the SPA be revised in the following manner:

- (1) The SPA should be allocated evenly per kWh across all customer groups;
- (2) The SPA should be tracked in the Market Value Adjustment Factor ("MVAF"); and
- (3) There should be proper recognition and assignment of costs (capital/non-capital, direct/indirect, labor/administrative overhead) attributable to this new procurement model which are intended to be recovered through the SPA.

(See CES Ex. 6.0 at lines 311-18.)

Ameren improperly has failed to specify what costs are to be included in the SPA, and failed to propose a reasonable allocation methodology for these costs. Instead, Ameren stated that the SPA will include general cost categories such as, "professional fees, costs of engineering, supervision, insurance, payments for injury and damage awards, taxes, licenses, and

any other administrative and general expense not already included in the auction prices for power and energy service, not recovered from the supplier fee.” (Ameren Proposed Schedule for Electric Rates at Sheet No. 27.048.) (*See* CES Ex. 3.0 at lines 292-96.)

Assigning costs to “cost-causers” benefits retail customers and contributes to the overall fairness of rates. (*See* CES Ex. 3.0 at lines 275-79.) 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 Coalition respectfully requests that the Commission direct Ameren to equitably allocate the SPA costs so that the costs are assigned to the cost-causers.

**Direct and Indirect Supply Costs  
Should Be Allocated Based on Customers’ Demand**

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.) As a result, all costs that Ameren incurs as a result of procuring its power through the proposed auction process should be included in the SPA.

The Commission should assure that generation supply costs are not allocated to delivery services for collection. 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 349-50.) Direct supply cost expenses are allocated to the

energy component of customers' bills, including: the cost of conducting the auction process itself, the expenses of various employees' time in reviewing the results of the auction, communicating the auction results to the Commission and other parties, incorporating the results into the billing system, and other similar auction-related direct expenses. (*See* CES Ex. 3.0 at lines 350-55.)

Similarly, Ameren will incur a variety of indirect costs as a consequence of the auction methodology. These costs arise out of a variety of responsibilities related to Ameren's ongoing role as a provider of electric energy at retail, even though it would be acquiring the related wholesale energy through the auction. (*See* CES Ex. 3.0 at lines 360-62.) For example, Ameren will incur costs related to:

- processing and tracking customer accounts that leave for RES service or opt in to BGS-LFP;
- communicating changing load characteristics to the winning suppliers as customers migrate;
- paying the suppliers each month;
- calculating the MVAF 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.) These costs likewise should be allocated to the energy component of customers' bills. (*See* CES Ex. 3.0 at lines 381-95.)

The precedent for identifying such costs is well established by, 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. 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 386-90.)

#### **The SPA Should Be Allocated on a Per-kWh Basis**

The SPA should be allocated evenly per kWh rather than by a fixed-dollar amount per account, per month. (See CES Ex. 3.0 at lines 399-439.) Additionally, the SPA should be tracked in the MVAF to ensure that Ameren neither over- nor under-collects for this expense. (See CES Ex. 3.0 at lines 425-28.)

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 Ameren'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.) This allocation method will produce a more accurate allocation of these costs consistent with the requirements of the Act. Additionally, the cost per kWh allocation method is consistent with the method Ameren has

already proposed for the application of the MVAF. (*See* Ameren Rider MV at Sheet No. 27.054.)

**The Parameters of the SPA Should Be Defined Within the Instant Proceeding**

Although the Commission should set the actual charge and the actual allocation in Ameren’s upcoming rate case, the Commission also should ensure that a “placeholder” is properly designed within the instant proceeding. Ameren has failed to appropriately describe the parameters of such a placeholder. In this proceeding, the Commission should address the types of costs which should be included in the SPA as well as the proper allocation method, and the manner in which the SPA is to be set. (*See* CES Ex. 6.0 at lines 456-58.)

In the instant proceeding, the Commission already is addressing the mechanics associated with Ameren’s proposed retail tariffs; Ameren has not provided any rationale for delaying consideration of the mechanics of the SPA. If the Commission does not address the SPA collection and allocation methodology in this proceeding, Ameren may have to make further changes to tariff language (assuming it alters how the “placeholder” is currently drafted) sometime in 2006. (*See* CES Ex. 6.0 at lines 461-64.) Such future revisions would make it more difficult for RESs to educate customers on how the auction works, resulting in additional market uncertainty at a time when customers are supposed to be formulating their energy purchasing strategies. (*See* CES Ex. 6.0 at lines 464-66.) The Commission should require Ameren to address the mechanics of the SPA within this proceeding.

**8. Rider MV – Market Value Adjustment Factor**

(*See* VII(B)(7).)

**9. Rider MV – Subsequent Review / Contingencies**

(*See* V(J).)

## C. Additional Tariff and Rate Design Issues

### 3. Rider D – Default Supply Service Availability Charge

Ameren has requested Commission permission to impose upon RES customers a form of “exit fee” or “post-transition customer transition charge” for a service that RES customers do not utilize. (*See* CES Ex. 3.0 at lines 242-44.) As designed, the DSSAC is a baseless, anti-competitive charge that would deter customers from switching to RESs. (*See id.* at lines 244-45.) The Commission should reject Ameren’s proposed DSSAC.

Ameren’s proposed DSSAC would entitle Ameren to assess a 15 cent-per-megawatt-hour (15¢/MWh) “non-bypassable” charge on all customers over 1 MW that select electric supply from someone other than Ameren. (*See* CES Ex. 1.0 at lines 843-55.) In its response to a data request EPS Data Request 2.01, Ameren asserted that “In essence, Rider D represents a capacity option premium, giving customers the right to take BGS-LRTP as default service.” (*See* Ameren response to EPS Data Request 2.01, attached to CES Ex. 1.0 as CES Ex. 1.7.) Thus, apparently this charge is supposed to compensate Ameren for the option such customers have to switch to the hourly, real-time service, Rider RTP-L, but Ameren failed to justify this charge, and has admitted that it has no cost-based justification.<sup>29</sup>

Although Ameren later referred to this charge as “insurance,” Coalition witness Dr. O’Connor (who once served as Illinois Director of Insurance) explained that this characterization or analogy is much misplaced: “Simply put, Rider-D is not an insurance policy, is not like an

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<sup>29</sup> Ameren admitted that it has no study or analyses to support its “hard coded” anticipated charge. (*See* Ameren’s response to IIEC Data Request 3-6 attached to CES Ex. 1.0 at CES Ex. 1.8.) Moreover, even if Ameren were to identify specific costs associated with reserve capacity for hourly customers, which it has not done in the instant proceeding, those costs should be recovered solely and fully from customers who take service under Ameren’s BGS-LRTP. (*See* CES Ex. 6.0 at 212-14.)

insurance policy, and the related charges are neither insurance premiums nor are they like insurance premiums.” (CES Ex. 4.0 at lines 783-85.)<sup>30</sup>

As a point of reference, the Commission should note that ComEd does not currently collect such a fee, even though it offers hourly pricing as a default service to customers with demands over 3 MW whose Rate 6L service has been declared competitive. (See CES Ex. 3.0 at lines 249-51.) ComEd also has not proposed to impose such a fee following the transition period for any customer who would default to its hourly product. (See *id.* at 251-52) Thus, in directly analogous circumstances, ComEd neither is collecting nor has proposed to collect such a fee.

Imposition of the DSSAC would further frustrate development of competition in the Ameren service areas. (See *id.* at lines 255-57.) As Ameren has failed to sufficiently justify the purpose of the fee, let alone the specific charges associated with it, the Coalition respectfully requests that Commission reject Ameren’s proposed DSSAC.

**5. Inclusion of Non-residential Rate Risk or Migration Premium as a Factor in Rate Prism for Larger BGS-FP Customers**

(See VII(B)(6).)

**6. Treatment of Uncollectibles**

The Commission should order Ameren to account separately for uncollectible expenses between “delivery services” related uncollectible expenses and “energy” related uncollectible expenses, and to charge to customers accordingly. Ameren properly identifies “uncollectibles” as a supply-related cost component and discusses its ability to collect it. (See Ameren Ex. 16.0 at

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<sup>30</sup> Dr. O’Connor further noted that if Ameren is making the case that the Rider-D charge is insurance, then wholesale suppliers would need to be licensed as insurers in Illinois or find themselves in violation of 215 ILCS 5/121 (See CES Ex. 4.0 at lines 779-81.)

lines 93-112. *See also* Ameren Proposed Schedule for Electric Rates at Sheet No. 27.049; Ameren Rider MV at Sheet No. 27.054.)

Ameren has agreed with the Coalition's recommendation to separate uncollectible expenses between delivery and energy supply customers. Ameren has further indicated that it would propose establishing a "factor" based on the relative relationship of total uncollectible expenses to total bundled revenue amounts. This factor would then be applied to the BGS adjusted price. (*See* Ameren Ex. 16.0 at lines 93-112). Pending final approval, this proposal will be incorporated into Ameren's rates in its upcoming general rate case.

The Coalition respectfully requests that the Commission approve Ameren's revised methodology for the proper allocation of uncollectible expenses.

#### **7. Credit Risk And Other Administrative Costs**

The Commission should order Ameren to implement a revised methodology for allocating expenses that will be incurred as a result of Ameren providing service under its "real-time pricing" or "RTP" hourly energy products. Ameren's proposed rate structure improperly would fail to fully allocate credit risk and administrative costs to customers taking service under Ameren's proposed Rider BGS-RTP products. (*See* CES Ex. 1.0 at lines 175-82; CES Ex. 3.0 at 448-77.) In other words, it appears that the hourly energy product, as currently proposed by Ameren, would not fully recover the costs associated with providing that service to customers. The Rider BGS-RTP products that proposed by Ameren are 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 Coalition presented un rebutted evidence that serving customers under Ameren's proposed BGS-RTP products will create additional costs that are generally not incurred with the

fixed-price full requirements BGS-LFP, BGS-FP products. (*See* CES Ex. 3.0 at lines 448-77.) The testimony of Coalition witnesses Domagalski and Spilky explains that, not surprisingly, there are additional costs associated with charging customers a rate that changes on an hourly basis compared to a rate that is reset annually. Specifically, the BGS-RTP products will result in Ameren incurring additional costs associated with (1) increased credit risk and credit exposure; and (2) increased administrative costs. (*See id.*)

**The BGS-RTP Products Should Reflect  
Ameren's Increased Credit Risk And Exposure**

Customers taking service under the BGS-RTP auction products will be exposed to potentially wide variability in hourly prices. (*See* CES Ex. 3.0 at lines 453-57.) Although there has only been limited experience with MISO to date, over the last year, the PJM Real Time Locational Marginal Pricing in the ComEd zone had over 100 hours with prices over \$100/MWh. (*See id.*) This uncertainty in the prices to be charged to these customers increases the risk that Ameren will have uncollectibles for customers taking service under this rate that well exceed levels incurred by Ameren in providing service under its annual and multi-year blended rates. (*See id.* at lines 457-60.)

Moreover, Ameren's uncollectibles risk associated with providing service under an hourly rate will be much greater under Ameren's proposed post-transition rate structure. (*See id.* at lines 453-65.) Coalition witnesses Domagalski and Spilky explained that, thus far, most customers relying on hourly priced products have done so on the basis of specific business programs for better adapting energy supply and costs to business operations and objectives. (*See id.* at lines 460-62.) However, under Ameren's proposed post-transition rate structure, the hourly product would be the default product for certain classes of customers, resulting in customers

taking service under the BGS-RTP products who might not do so as a result of analysis and specific election. Providing service to these customers naturally will involve a greater risk of uncollectibles. (*See id.* at line 465.) Ameren improperly has failed to provide an estimate of this additional cost component, and failed to propose an allocation or recovery methodology that would provide a high level of confidence that such costs would be recovered from the cost-causers rather than from others.

**The BGS-RTP Products Should Reflect  
Ameren's Incremental Cost To Serve Hourly Customers**

Serving hourly customers likely will cost more than serving customers receiving the fixed rate products. Coalition witnesses Domagalski and Spilky explained that: (1) hourly products require more intervention which in turn increases 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 BGS-RTP customer bills would be delayed due to a lack of data, resulting in increased working capital expenses. (*See* CES Ex. 3.0 at 469-76.) 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, these costs should be allocated evenly per kWh to all customers receiving the hourly product. (*See* CES Ex. 3.0 at lines 574-75.) As with the SPA, 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 Rider RTP products, and should be updated annually to reflect changes in the cost structure. (*See id.* at lines 481-86.)

The Coalition respectfully requests that the Commission (1) approve an allocation methodology in this proceeding associated with increased rate of uncollectible expenses resulting from customers being exposed to wide variability in hourly prices; and (2) put in place a framework for identifying the incremental costs associated with serving hourly customers above and beyond that contemplated for those receiving the fixed price auction products. (*See id.* at lines 443-86.)

### **8. Integrated Distribution Company Issues**

To assist in providing objective educational materials to the public that are consistent with the Commission’s “Integrated Distribution Company” rules, the Commission should direct Ameren to initiate a separate docketed proceeding for consideration of new procurement process communication materials. (*See* CES Ex. 3.0 at lines 410-23.)

Each of the Ameren electric utilities has been approved to operate as an Integrated Distribution Company (“IDC”). (*See generally* Commission Docket Nos. 02-0392, 04-0242, 04-0630.) The Illinois Administrative Code states that while operating as an IDC, a utility “shall not promote, advertise or market with regard to (the) offering or provision of any retail electric supply service.” (83 Ill. Admin Code 452.240(a).) The Commission should be concerned about how Ameren may 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.

Ameren and other interested parties should have an opportunity to derive an appropriate balance between getting the word out to customers about the supply choices available from Ameren 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 417-20.) As a result, the

Commission should direct Ameren to initiate a separate docketed proceeding in which such communication and marketing materials would be reviewed, commented upon, and approved by the Commission.

If Ameren fails to initiate a proceeding to evaluate customer education issues, the Commission should initiate the proceeding on its own motion. This additional proceeding should be initiated within a reasonable period of time, such as 30 days, after entry of a final order in this proceeding, so that there is time to evaluate the material before it is distributed.

### **CONCLUSION**

The Commission's leadership has proven to be a steadying force in the evolution of the competitive market in Illinois. The Commission is now faced with the task of setting the ground rules for the next phase of the continuing evolution of the Illinois retail electric market. Although, as a general matter, Ameren's reverse auction proposal is the best means for the procurement of electric power and energy, there are several critical modifications that should be made to counter Ameren's long-running practice of obstructing and delaying the development of competitive markets; with these revisions, Illinois consumers throughout the State will realize the benefits of competition. Ameren's current proposal, little changed from its original proposal, is now divergent from ComEd's revised procurement proposal and falls seriously short in several respects and should be revised by the Commission.

The Coalition respectfully requests that the Commission enter an Order that:

- (1) Adopts Ameren's proposed BGS tariffs, with the modifications proposed by the Coalition;
- (2) Adopts the Coalition's recategorization of Ameren's auction products so that customers between 400 kW and 1 MW of demand are included together with business customers above 1 MW in demand in the blended, multi-year auction product group, making the

customers groupings across ComEd and Ameren more similar in their characteristics for purposes of the contemporaneous auction;

- (3) Adopts a migration risk premium allocation factor or adopts the Coalition's suggestion of applying the single year auction product to all customers over 400 kW;
- (4) Establishes an appropriate date for the initial auction to take place (which, given Ameren's other revisions, may be September 2006, but the record evidence also would support Staff's recommendation for a July 2006 auction, or the Coalition's original May 2006 date recommendation);
- (5) Requires Ameren to revise its proposed 30-day enrollment window and adopt a 75-day enrollment window, or alternatively, revise its customer groupings and provide for an 50-day enrollment period in the initial auction, followed by 45-day enrollment periods thereafter, mirroring the proposal advocated by ComEd in ICC Docket No. 05-0159;
- (6) Eliminates the anti-competitive, highly discriminatory, non-bypassable Rider-D fee on customers who purchase supply from ARES.

In addition, the Coalition respectfully requests that the Commission enter an Order that:

- (7) Directs Ameren to ensure that the Supply Procurement Adjustment 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;
- (8) Directs Ameren to separately account for the uncollectible amounts related to delivery services customers and bundled services customers by class;
- (9) Directs Ameren to properly recognize and incorporate into Ameren's proposed BGS-RTP products the increased uncollectible expenses rate resulting from real-time customers being exposed to wide variability in hourly prices;
- (10) Directs Ameren to ensure that new customers to the Ameren 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; and
- (11) Grants such other further or different relief as the Commission deems just and reasonable.

Respectfully submitted,

**CONSTELLATION NEWENERGY, INC.  
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