

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

CENTRAL ILLINOIS LIGHT COMPANY)	
d/b/a AmerenCILCO)	
)	
CENTRAL ILLINOIS PUBLIC SERVICE COMPANY)	
d/b/a AmerenCIPS)	
)	
ILLINOIS POWER COMPANY)	Docket Nos. 05-0160, 06-0161,
d/b/a AmerenIP)	and 05-0162 (consol.)
)	
Proposal to implement a competitive procurement)	
process by establishing Rider BGS, Rider BGS-L,)	
Rider RTP, Rider RTP-L, Rider D, and Rider MV.)	

INITIAL POST-HEARING BRIEF OF THE AMEREN COMPANIES

October 14, 2005

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I. EXECUTIVE SUMMARY / INTRODUCTION

The Ameren Companies'¹ proposal in these consolidated dockets addresses significant and permanent changes to the Illinois electricity industry caused by the enactment of the Illinois Electric Service Customer Choice and Rate Relief Law of 1997 (“Restructuring Act”) (*see* Section III.A). The Restructuring Act has resulted in enormous benefits for Illinois, as the Commission itself has noted:

- Residential customers have benefited from one of the largest and longest rate reductions, and today are paying 20% less than they paid for electricity in 1994. The total savings statewide are estimated to be 3.5 billion dollars.
- Many new entities have entered Illinois to compete for electric supply.
- Customers have been given the power of choice, and have selected these alternative retail electric suppliers (“ARES”).
- Many industrial and commercial customers have realized significant savings from selecting the Power Purchase Option (“PPO”) or an ARES; some indicate that these savings have helped them to keep their business in Illinois rather than move to a lower cost state.
- Statewide service reliability has improved dramatically.
- Over 9000 MWs of new generation has been built in Illinois by private investors.
- These investors, and not customers, have mustered the capital to build these plants and have borne the risk of cost overruns as well as the potential of uneconomic results in stranded costs.
- Illinois utilities have restructured operations by divesting generation, and have become more productive and efficient in order to face the emerging competitive marketplace.

Executive Summary, Final Report of the Illinois Commerce Commission’s Post 2006 Initiative (“Executive Summary”), p. 1.

¹ The Ameren Companies are Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP.

Indeed, the Ameren Companies have significantly contributed to the sum total of these recognized benefits in Illinois, through significant infrastructure investments and service improvements since the Restructuring Act's passage. And today, the Ameren Companies' bundled residential electricity rates are an average of 17% below the national average, and their Illinois residential customers will have saved nearly \$1 billion through 2006.

While a resounding success, the Restructuring Act has also presented significant challenges for the Illinois electricity industry. The Ameren Companies divested generation assets pursuant to the Restructuring Act (as discussed further in Section III.A), and now own virtually no generation. As a result, and as contemplated by the Restructuring Act, the Ameren Companies must now purchase almost all of their power from the wholesale market. How the Ameren Companies may prudently do so, at the lowest available cost to ratepayers, presents a significant practical challenge, fraught with federal and state regulatory constraints (*see* Section III).

Recognizing such considerable challenges, the ICC established a process – the Post 2006 Initiative – by which a diverse group of interested parties could participate in an extensive series of meetings and workshops to examine the future of the electricity industry in Illinois, public policy issues surrounding electricity, and critical questions concerning procurement of supply to serve customers in the post-2006 environment. The Post 2006 Initiative process was an unprecedented effort, properly commended in the Commission's final report to Governor Blagojevich and the Illinois General Assembly, in which “[e]very significant stakeholder interest was represented . . . with the participants bringing the views of consumers, power generators, financial intermediaries, utilities, units of government, environmental organizations and others to bear on the important topics that will shape the future of the electric industry in

Illinois.” Executive Summary, Final Report of the Illinois Commerce Commission’s Post 2006 Initiative (“Executive Summary”), p. 2. Through this immense collaborative effort, the Ameren Companies have listened to the views of Staff and all stakeholders, and have responded to widespread support for an open, transparent, market-based procurement approach. At the conclusion of the Post 2006 Initiative workshops, the ICC Staff issued a Final Report recommending that, “[l]arge Illinois utilities that do not own significant generation resources should be encouraged to procure their electricity via a vertical tranche auction....” (ICC Staff Report at 18.)²

The Ameren Companies’ proposal in this proceeding follows Staff’s recommendation, calling for a “vertical” or “full requirements” auction to procure the supply needed to serve retail customers beginning on January 1, 2007. The proposed competitive procurement auction (“CPA”), is a proven mechanism designed to achieve stable rates and to secure the lowest price attainable in the marketplace. The proposal is consistent with state and federal laws and reflects sound public, economic and regulatory policy. The CPA process adopts a descending clock auction format in which the lowest priced bidder wins the right to supply power – an established technique that will stimulate vigorous competition among numerous suppliers to drive costs down. The proposed auction is consistent with and promotes the Restructuring Act’s goals of achieving a viable, least-cost, long-term energy solution for Illinois customers. Implementation of this state-of-the-art supply acquisition approach will continue the progress Illinois has made

² This acquisition approach is based on and reflects the work of the Post 2006 Initiative’s Procurement Working Group, which reached a consensus on eighteen ideal characteristics for the post-2006 procurement process. The full requirements reverse auction process proposed by the Ameren Companies has each of those characteristics, and provides benefits that are unavailable under any other acquisition approach. For that reason, it is supported by a wide group of stakeholders.

since passage of the 1997 restructuring legislation and will make our state a national model for consistent, stable success with restructuring of the electric utility industry.

The Citizens Utility Board (“CUB”) and the Attorney General’s Office (“AG”) have objected to the proposed tariffs, without basis in law or fact. Neither AG nor CUB has offered any meaningful alternative. To the contrary, they suggest courses of action that are beyond this Commission’s authority and are contrary to law.

Other parties, who have endorsed the auction, have made proposals regarding its mechanics. Some of these proposals the Ameren Companies have adopted. The Ameren Companies’ reasons for opposing alternative proposals that have not been adopted in this Initial Brief.

The Post 2006 Initiative process and these proceedings have been highly successful. The parties, in the main, support the auction. The only resistance comes from two parties, CUB and AG, who oppose the possibility of higher future electricity rates. Given that the Restructuring Act’s mandatory rate freeze will end on January 1, 2007, these parties’ position is not founded in law or reality.

II. NEED FOR COMMISSION ACTION

It cannot be disputed that the Ameren Companies must go to the wholesale marketplace to purchase power for electricity service after January 1, 2007, as discussed further in Section III. As authorized and encouraged by the 1997 Act (220 ILCS 5/16-111(g)), the Ameren Companies have fully divested and no longer own any facilities that generate electricity. However, the Ameren Companies remain obligated under Section 16-103 of the PUA to provide “bundled” electric service to millions of customers, meaning that those customers continue to have a statutory right to purchase from the Ameren Companies both electricity (the commodity) and the service of having that electricity transported to the customer’s premises. *See* 220 ILCS 5/16-103.

Because the Ameren Companies do not generate the necessary electricity, they must purchase that electricity at wholesale. In establishing and investing in the Post 2006 Initiative process, the Commission and all participants recognized the importance and the need for collaboration in determining how such power will be procured.

Through the Ameren Companies' proposal, the Commission has a unique opportunity to realize the goals of the restructuring process. It can act to endorse a procurement system in 2007 that offers the prospect of lower rates for customers than they paid in the early 1990s. The benefits of the proposal are widely recognized, reflecting the consensus positions of the many interested parties who participated in the Commission's post-2006 Initiative. Acting now will accomplish the remaining step that the Post 2006 Initiative's months of effort identified as being in the best interests of customers. It will complete the transformation of the Illinois electric marketplace and establish a foundation that will assure customers access to reasonably priced, reliable service for the indefinite future.

III. LEGAL ISSUES

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

The Illinois Electric Service Customer Choice and Rate Relief Law of 1997 ("Restructuring Act") fundamentally changed the electricity industry in Illinois. The Illinois General Assembly recognized that "[c]ompetitive forces are affecting the market for electricity as a result of recent federal regulatory and statutory changes and the activities of other states," and that "[l]ong-standing regulatory relationships need to be altered to accommodate the competition that could fundamentally alter the structure of the electric services market." 220 ILCS 5/16-101A(b). Accordingly, the General Assembly enacted new regulatory provisions for electric service in Illinois, and instructed the ICC that it "should act to promote the development

of an effectively competitive electricity market that operates efficiently and is equitable to all consumers,” 220 ILCS 5/16-101A(d), while continuing to allow utilities to recover costs plus a fair return on investment. 220 ILCS 5/16-101A(a), (c).

The Restructuring Act instituted immediate and substantial benefits for electric utility ratepayers during the “mandatory transition period” (220 ILCS 5/16-111), defined as “the period from the effective date of this [Act] through January 1, 2007” (*id.* § 16-102). During this time period, the Restructuring Act froze residential electricity rates and authorized (and, in many ways, encouraged) electric utilities to reorganize their businesses and to divest generation assets, subject to the ICC’s approval. 220 ILCS 5/16-111(g) (authorizing a utility to “implement a reorganization” and to “sell, assign, lease or otherwise transfer assets to an affiliated or unaffiliated entity”).

The Restructuring Act’s authorizing provisions streamlined the existing procedures for a utility’s sale or transfer of its generation assets, and limited the ICC’s authority over approval of such transactions. *See* 220 ILCS 5/16-111. Notably, the statute also explicitly limits the ICC’s ability to revisit or reexamine the approval of such reorganization: “The Commission shall not in any subsequent proceeding or otherwise, review such a reorganization or other transaction authorized by this Section.” 220 ILCS 5/16-111(g).³

In addition, the Restructuring Act established disincentives for utilities to choose not to restructure. Section 16-111(i) altered the traditional provision for actual cost recovery and established a future (post-2006) cap on the generation component of rates, measured as the

³ Section 16-111(g) directly refutes the testimony of CUB witness Dr. William Steinhurst, who testified that the Ameren Companies’ proposal “effectively side-step[s] the possibility of a prudence review of certain past actions regarding divestiture taken after passage of [the Restructuring Act.]” The statute explicitly provides that the ICC does not have authority to undertake any such review, “in any subsequent proceeding or otherwise.” 220 ILCS 5/16-111(g).

“market value” (a proxy for market electricity prices calculated pursuant to the terms of Section 16-110) plus 10%. Accordingly, a utility choosing not to restructure, *i.e.*, to streamline operations and bring costs in line with market competitors, would face the prospect of potentially significant disallowances of costs.

The Restructuring Act *requires* electric utilities to continue to provide “bundled” retail service, consisting of both electricity and the delivery of that electricity to the customer’s premises, until the service is declared competitive under Section 16-113. 220 ILCS 5/16-103. That is, the Restructuring Act provides that the Ameren Companies are required to continue selling electricity at retail even though they have divested their generation assets and must purchase that electricity at wholesale.⁴ The Section 16-111(i) price cap discussed above would apply to service that has not been declared competitive.

When the Ameren Companies divested their former generation facilities following the 1997 Act, and as part of those divestiture transactions, the Companies entered into power purchase agreements that allowed the Companies to be supplied by the new owners at established prices for a set period of time. All of those power purchase agreements expire by the end of 2006, which is also when the “mandatory transition period” of the 1997 Act expires. *See* 220 ILCS 5/16-102. Accordingly, if the Ameren Companies wish to provide electric service after December 31, 2006, they must go into the marketplace to obtain that supply. Hence, the cost of wholesale electric power – which the Ameren Companies now *must* procure in order to serve customers, *see* 220 ILCS 5/16-103(a) – is necessarily a key determinant of retail rates.

⁴ As discussed below, wholesale electricity transactions and prices are subject to the exclusive regulatory authority of the Federal Energy Regulatory Commission. *See, e.g., New York v. FERC*, 535 U.S. 1, 18-19 (2002) (“the [Federal Power Act] gives FERC jurisdiction over the transmission of electric energy in interstate commerce and . . . the sale of such energy at wholesale”).

The Ameren Companies' tariff proposal in these proceedings address these concerns. The Companies have proposed tariffs that: (1) define future generation services in compliance with the PUA, (2) establish a procurement process by which the Companies will obtain the power supply necessary to provide the generation services, and (3) establish a methodology that will "translate" the auction prices paid by the Companies (*i.e.*, their actual costs) for the essential power supply into rates to end users. Resp. Ex. 1.0, pp. 3-4. Customers will pay only the actual price of power and energy as determined by a competitive full requirements reverse auction held under the watchful eye of the Commission.

B. ICC authority under Article IX and Article XVI to approve the filed tariffs

The PUA allows the ICC to approve the Ameren Companies' tariffs, which set retail rates to recover the actual market-based wholesale costs the Companies incur to provide retail service.⁵ No matter what procurement method is ultimately used, the Ameren Companies' retail rates will inevitably reflect their costs of purchasing power from the wholesale market, because the Ameren utilities do not own power plants to generate their own power.⁶ Nothing in the PUA (including Section 16-103(c)) even remotely suggests that, in such circumstances, the ICC must ignore the Ameren Companies' costs of procuring power in establishing retail rates, as suggest. To the contrary, the PUA requires the ICC to establish retail rates that reflect the Ameren Companies' reasonable and prudent costs of providing retail service. *See* 220 ILCS 5/9-101, 9-211. Accordingly, if one of the Ameren Companies' reasonable and prudent (not to mention unavoidable) costs of providing retail service is purchasing power at wholesale (as is the case

⁵ The Commission's Office of General Counsel has indicated that the Commission has authority under the Act to approve the proposed tariffs. *See* Comments of the Commission's Office of General Counsel, Post 2006 Implementation Report at page 10. On July 15, the full Commission upheld the ALJ's determination that it has authority to approve the proposed tariffs. *See* July 15, 2005, Notice of Commission Action, and June 1, 2005, Ruling of Administrative Law Judge.

here), then the ICC is *required* to approve retail rates that reflect those costs, pursuant to Article IX. *See Citizens Utility Board v. Illinois Commerce Comm’n*, 166 Ill.2d 111, 121 (1995) (“[i]n setting rates, the Commission . . . *must* allow the utility to recover costs prudently and reasonably incurred” (emphasis added)).

1. Commission Authority under Article IX.

The Ameren Companies filed the tariffs pursuant to Article IX of the PUA, 220 ILCS 5/9-101 *et seq.*, which governs tariffed rates for non-competitive electric services. Article IX requires the ICC to ensure that tariffed rates for non-competitive electric services are just and reasonable, and reflect the utility’s prudently incurred costs. Accordingly, as long as the Ameren Companies’ costs of purchasing wholesale electricity in a reverse auction process are reasonable, prudently incurred costs, the ICC has the authority to approve retail rates that incorporate those costs.

The Act establishes different standards against which an electric utility’s competitive and non-competitive service retail rates are to be assessed. Retail rates for non-competitive services are subject to the traditional ratemaking provisions of Article IX of the PUA, which requires that such rates be “just and reasonable” in light of the utility’s costs of providing service. 220 ILCS 5/9-101. *See also* 220 ILCS 5/16-103(a) (providing that Article IX shall continue to apply to rates for non-competitive services). As the Illinois Supreme Court has explained, “[t]he determination of whether a cost is includable in or disallowable from the utility’s rate base is the essence of Commission’s ratemaking duties,” and “costs which the Commission has found to be reasonable are included in [a utility’s] rate base, while costs found to be unreasonable are disallowed.” *People ex rel. Hartigan v. Illinois Commerce Comm’n*, 148 Ill.2d 348, 368 (1992).

⁶ The Ameren Companies own generating capacity sufficient to serve less than 1.5% of their distribution load.

See also 220 ILCS 5/1-102(a)(iv) (Illinois' policy is to regulate energy services in a manner such that "tariff rates for the sale of various public utility services are authorized such that they accurately reflect the cost of delivering those services and allow utilities to recover the total costs prudently and reasonably incurred").

Regardless of what other parties may argue, the Ameren Companies have not asked the Commission to determine whether their proposal satisfies the market-based cost requirements of Section 16-103(c) of the PUA. That section addresses ratemaking for competitive services. Rather, the issue here is whether, in accordance with the requirements of Article IX, the Ameren Companies' tariffs reflect "just and reasonable" retail rates based on reasonable, prudently incurred costs. The Ameren Companies have asked the ICC to approve (and oversee) a competitive bidding process that by its nature (i.e. inviting the merchant to bid in a fair and transparent auction) will produce the least-out source of supply, thereby satisfying the requirements of Article IX. Nearly 50 years of Illinois Supreme Court precedent confirms that, under the traditional ratemaking standards of Article IX that continue to apply to the Ameren Companies' non-competitive service rates, the ICC may approve tariffs that automatically pass through to retail customers the prudently incurred costs a utility incurs purchasing commodities in the wholesale market, as the Companies' proposed tariffs provide. For example, in *City of Chicago v. Illinois Commerce Comm'n*, 13 Ill.2d 607 (1958), the Supreme Court reviewed an ICC order approving a Peoples Gas tariff for retail rates "providing for an automatic adjustment from time to time . . . to reflect changes in the wholesale cost to Peoples of natural gas purchased." 13 Ill.2d at 608-09. The Court explained that the gas utility's tariff "provides for increases or decreases in the charges for gas sold by Peoples . . . to the extent of increases or decreases in the wholesale price of such gas" (*id.* at 609), similar to the Ameren Companies'

tariffs at issue here. The Court rejected claims that the ICC had no authority to approve such a tariff, and that “an automatic increase in the charge to consumers, based on an increase in the wholesale cost of gas, is illegal since there is no provision for a public hearing when each additional increase becomes effective,” *Id.* at 611, 612, and held that the ICC “acted reasonably and within the ambit of its statutory authority.” *Id.* at 619. As the Court explained, the ICC’s “statutory authority to approve rate schedules embraces more than the authority to approve rates fixed in terms of dollars and cents,” but encompasses the authority to approve a rate “formula,” including an “automatic adjustment clause” whereby retail rates depend on the utility’s wholesale costs. *Id.* at 611.

Decades later, the Supreme Court faced a similar issue in *Citizens Utility Board*, 166 Ill.2d 111 (1995). In that case, CUB challenged an ICC order approving a utility tariff “rider” allowing the utility to automatically pass through to retail customers certain costs incurred by the utility. The Court, citing *City of Chicago* with approval, rejected CUB’s challenge. *See id.* at 138-39.

Similarly, under the traditional ratemaking standards of Article IX that apply to the Ameren Companies’ retail rates, the ICC has the authority to approve retail rates that reflect market-based wholesale costs incurred by the Companies. ALJ Jones reached this very conclusion in denying the motion to dismiss in the ICC proceeding, raising the following question:

In addition, as several parties have commented, it is difficult to see by what means Movants envision the cost of procuring power and energy being determined for non-competitive services in a manner consistent with Movants’ theory that market based prices may not be used to establish costs on which to base rate components for non-competitive services.

Administrative Law Judge's Ruling, Docket Nos. 05-0160 et al. (consol.), June 1, 2005.

Otherwise stated, if the Ameren Companies are going into the market to buy power their customers need, and the PUA both assures total cost recovery, but precludes the use of the actual cost paid for wholesale power to develop rates, how then are rates to be determined? Thus far, opponents to the Ameren Companies' proposal have no answer for this. As discussed below, because the ICC has no authority to set wholesale rates, opponents to the Ameren Companies' tariffs would leave the ICC with no ratemaking option.

2. Commission Authority Under Article XVI.

The Commission also has ample authority to approve the proposed tariffs under Article XVI, which charges the Commission with “promot[ing] the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers.” 220 ILCS 5/16-101(d). As the Commission has observed, the General Assembly “envisioned greater reliance on market forces” in the setting of just and reasonable electricity rates following passage of the Restructuring Act. Executive Summary, p. 2. Section 16-112 of the Act explicitly empowers the Commission to determine the price of electric power and energy based on its “market value.” Specifically, the Commission may approve “a tariff that has been filed by the electric utility with the Commission pursuant to Article IX of the Act and that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy.”

By its terms, Section 16-112(a) does not mandate a particular method for determining market value, but broadly allows a range of measures that objectively establish the market-based price for electricity in the particular market in which the utility sells and the customers in its

service area buy. Any method that provides for a determination of market value as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the utility's retail electricity market is permitted. *See In re Commonwealth Edison*, 2001 WL 682088 (explaining that General Assembly intended "market value" in Section 16-112 to reflect the "value of power and energy at the retail level"). As applied in previous "market value" determinations under Section 112(a), *see In re Commonwealth Edison*, 2001 WL 682088, the touchstone is identifying the market value for electric power in the specific "market in which the utility sells, and the customers in its service area buy, electric power and energy." 220 ILCS 5/16-112(a).

Under Section 16-110 of the Act, the market value determined pursuant to Section 16-112 will establish post-transition period power purchase option prices. The proposed tariffs provide that the same market value be the basis for a restructuring and unbundling of the prices to be charged to the Ameren Companies' retail customers for electric power and energy after the mandatory transition period expires. Section 16-109A of the Act expressly authorizes the Commission to approve such a restructuring and unbundling of prices, providing that "the Commission shall have the authority 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."

The Act also contemplates the use of the market value of power and energy determined under Section 16-112 as the basis for the price of power and energy charged to bundled service customers. Section 16-111(i) provides that:

In determining the justness and reasonableness of the electric power and energy component of an electric utility's rates for tariffed services subsequent to the mandatory transition period and prior to the time that the provision of such electric power and

energy is declared competitive, the Commission shall consider the extent to which the electric utility's tariffed rates for such component for each customer class exceed the market value determined pursuant to Section 16-112....

220 ILCS 5/16-111(i).

The Ameren Companies' tariffs propose what Section 16-112 endorses -- that customers in the post-mandatory transition period in Illinois pay a price for electric power and energy that is determined by reference to one of the statutory methods for establishing market value. No alternative method for establishing the unbundled price of electric power and energy could more closely adhere to the letter and spirit of the Act than the proposed process.

3. Rider MV

Each of the Ameren Companies seeks Commission approval for a tariff, Rider MV, that determines the "market value of electric power and energy" based on the results of an open, multi-party competitive procurement auction process for standard products and contracts (as provided for in Rider MV) that, in fact, define the actual market value of power and energy in the Ameren Illinois footprint. There can be no doubt that is appropriate to determine the "market value" of electric power and energy as a function of contracts resulting from a fair and open auction for full requirements load in the Ameren Illinois footprint area in which the lowest bidder wins.

Tranche-specific forward contracts to supply power in the future at fixed prices, obtained in the market defined by the competitive bidding of the vertical tranche auction described in Rider MV, satisfy the "market value" determination methods in Section 16-112(a). Of necessity, the auction mechanism generates contracts "applicable to the market in which a utility sells, and the customers in its service area buy, electric power and energy." 220 ILCS 5/16-112(a). Under the auction process, the Ameren Companies divide their actual combined bundled retail

electricity load obligation into tranches; the lowest bidder for a given tranche is selected for the contract. Thus, the “applicab[ility]” of the resulting power supply contracts to the Ameren Companies’ retail market could not be more direct. As discussed above, the auction process is set forth in a tariff filed pursuant to Article IX, just as envisioned in the statute, and thereby will be subjected to extensive review and control by the Commission to ensure that the process is objective, transparent, fair and wholly independent of the Ameren Companies.

4. Prudence

CUB, through its witness Dr. Steinhurst, argued that, through their auction proposal, the Ameren Companies are “effectively side-stepping the possibility of a prudence review of certain past actions regarding divestiture taken after passage of [the Customer Choice Act.]” CUB Ex. 4.0, p. 4. CUB’s contention is both legally and factually wrong.

Each of the Ameren Utilities (in the case of AmerenIP and AmerenCILCO, prior to acquisition by Ameren Corporation) sought appropriate Commission approval of their divestiture actions, through a formal, public, Commission process, according to standards set by the Customer Choice Act. Specifically, each sought approval of a transfer of generating assets pursuant to Section 16-111(g) of the Customer Choice Law. CUB’s contention is that the prudence of those transfers need to be considered now, because the Commission in each case found, as Section 16-111(g) requires, that the transfer did not create a significant likelihood that the utility would require an electric rate increase during the mandatory transition period and that the transfer would not render the utility unable to provide safe and reliable service. See 220 ILCS 5/16-111(g).

The Commission may not revisit the generation transfers. Section 16-111(g) states expressly that the Commission “shall not in any subsequent proceeding or otherwise, review such a . . . transaction authorized by this Section. . . .” 220 ILCS 5/16-111(g). What CUB is

suggesting is that the Commission revisit the transaction, which is exactly what the statute says the Commission cannot do.

Further, the Commission cannot, after the fact, impose a new standard on a transaction that exceeds its statutory authority for two reasons. First, the Commission has only that authority that is granted to it by statute. *Ill. Commerce Comm'n et al. v. N. Y. Centr. R.R. Co. et al.*, 398 Ill. 11, 16 (1947) (“The Commission has no arbitrary powers. . . . It derives its power only from the statute and has no authority except such as is expressly conferred upon it.”). The Commission was authorized only to review two aspects of the transaction and it did so. It cannot undertake some additional inquiry on its motion, even if the statute did not expressly bar such an inquiry. Second, constitutionally, the Commission cannot change the rules after the fact. The Commission approved the transfer without condition and cannot impose additional conditions now.

The Ameren Companies note that CUB could have intervened in any of the divestiture proceedings; and, in fact, they did so, in IP’s case (99- 0209). CUB raised no objections to *any* of the so-called divestiture actions that the Ameren Companies took *at the time they took them* – which is the appropriate time frame in which one should examine prudence.

Moreover, the Commission conditioned Ameren’s acquisition of CILCO and IP on a competitive bidding process when the existing supply contracts expire. In reliance on those conditions, Ameren closed on the transactions. The Commission cannot now impose additional conditions on power procurement that are inconsistent with the competitive bidding that the Commission insisted on, and to which CUB and the AG agreed.

And that’s just the legal infirmity of CUB’s position. The evidence shows that there was nothing imprudent about the actions taken by the Ameren Companies. As Mr. Nelson explained,

the Commission orders approving the transfers indicate that the Commission reviewed any information from which a conclusion can be drawn that the utilities acted . For example, in the Commission order approving the transfer of CIPS' generation, the Commission concluded, in relevant part:

After the [Power Supply Agreement, or "PSA"] expires, AmerenCIPS plans to acquire power and energy from market sources. According to evidence presented by the Company, a relatively large amount of new generating capacity is expected to be available in the market by the conclusion of the PSA and AmerenCIPS should have access to sufficient capacity and energy to meet the requirements of its customers. (CIPS Transfer Order, Docket 99-0398, p. 22.)

Similarly, the Commission order in IP's transfer proceeding, in which CUB intervened, concluded:

Based on its review of IP's April 16, 1999 notice and of the evidence submitted by the Company and Staff, the Commission concludes that the proposed transfer of IP's fossil generation assets to Illinova should be approved. . . . In addition, the evidence establishes that the proposed transaction will not render IP unable to provide its tariffed services in a safe and reliable manner. . . . No party has presented any evidence or argument to the contrary, and no party opposes the proposed transfer. (IP Transfer Order, Docket 99-0209, p. 22 (emphasis added).)

The Commission's conclusion in the CILCO matter included the following statement:

After the PSA expires, CILCO plans to acquire power and energy from market sources. According to evidence presented by the Company, CILCO should have access to sufficient capacity and energy to meet the requirements of its customers. (CILCO Transfer Order, Docket 02-0153, p. 14.)

The Commission's approval of the transfers and the Commission's specific findings noted above demonstrate the prudence of the decisions to make transfers, based on the information at hand at the time of the transfers. The Commission reviewed the facts available at the time, and, based on those facts, concluded there would be ample generation in the market to supply the power needs of the Ameren Companies' customers.

CUB witness Steinhurst's claim that "Illinois law . . . allowed divestiture. It did not mandate it," (CUB Ex. 4.0, p. 8.) is misleading, at best. As previously discussed, the Customer Choice Act contained strong incentives for the utilities to transfer out generation facilities. The Act contained a provision which capped utilities' retail rates at the "market value" of electricity plus 10%. The Ameren Companies knew at the time that they made their respective decisions to transfer generation facilities, that failing to divest could lead to rates being capped below their actual, total generation production cost. Resp. Ex. 17.0, p. 16. This provision in the Act was a strong legislative and regulatory incentive to divest, and a disincentive to retain generation capabilities. This was a major factor in the Companies' decisions to transfer generation. *Id.*

At the time of generation transfers, the Ameren Companies had a reasonable belief that market forces, such as new capacity additions, would place downward pressure on the market value of electricity. Resp. Ex. 17.0, p. 16. This was not an uncommon or unique belief, and, indeed, as the record shows, as recently as last year, CUB shared that same belief, and opposed any extension of existing power supply agreements because wholesale prices were heading down. ComEd Cross Ex. 9.

Further, it would not be reasonable or appropriate to expect that each of the Ameren Companies would have been able to forecast today's power prices and based on that foresight have made the decisions not to transfer generation. As Mr. Nelson explained, it is important to recognize that the market conditions that exist today did not exist at the time that these divestiture decisions were made. The Ameren Companies cannot predict and do not claim to be able to predict the price of power in future years. Resp. Ex. 17.0, pp. 16-17. As Dr. Steinhurst acknowledged, the prudence of a utility's actions (for purposes of cost recovery) must be evaluated from a forward-looking perspective. CUB Ex. 4.0, p. 9. Hindsight is never an

appropriate perspective to use when evaluating prudence. Resp. Ex. 17.0, p. 17; Joint Tr. 504 (Steinhurst). Accordingly, whether prices are higher or lower today than they used to be, or whether they ultimately differ from what was reasonably expected at the time the decision was made is irrelevant. *Id.*

What is relevant is the information available to the utilities at the time they made their transfer decisions. In this regard, the Commission would not look at whether someone else possessing the same information might arrive at a different conclusion; rather, the Commission would consider whether the utility's actions were reasonable given the then known and knowable information.

Mr. Nelson explained that the facts that were known during the time period of the transfer proposals include: (1) a very large amount of announced new generation in Illinois, and the surrounding region, (2) relatively low natural gas prices, (3) relatively low and stable coal prices, and (4) the likelihood that a regional transmission organization would be implemented (indeed, the Consumer Choice Act required that the Ameren Companies join an ISO). Resp. Ex. 17.0, p. 17. All of these facts would reasonably lead one to believe that there would be downward pressure on the price of electricity. *Id.* A significant increase in generation supply through new construction – which one would expect to be more efficient than existing supply (or no one would build it) has such an effect. *Id.* A shift in the supply curve will result in lower relative prices. A low price for critical inputs such as natural gas or coal would also keep prices low. *Id.* at 17-18. Indeed, the prices for such components were low and stable enough that the Ameren Companies (and ComEd) voluntarily filed to cancel their fuel adjustment clauses. *Id.* at 18. The development of RTOs was expected to improve the efficiency of the wholesale marketplace by, among other things, lowering economic and non-economic barriers to transmission of power. *Id.*

Accordingly, at the time the Commission reviewed these transactions, the information available to the utilities indicated that wholesale competition would develop further and that increasing supply and low input prices would hold prices down. Also, the utilities knew that they could run the risk that their generation facilities could become idle or stranded, due to switching. Indeed, in combination with the specific provisions in 16-111(i) of the Restructuring Act (which effectively capped the utilities' retail rates at market value plus 10%), these determinants weighed heavily on each of the Ameren Companies' decisions to divest their generation.

Lastly, we note that CUB does not raise any concerns or questions that could be legitimately raised in a prudence review of the transfers, even if the Commission could revisit those transactions now. For example, Dr. Steinhurst suggests that the Commission should determine whether, in hindsight, the Ameren Utilities could have, or should have, better predicted future electricity prices or retail rates, or managed its business differently. CUB Ex. 4.0, p. 10. These questions are inappropriate in a prudence review. The Commission may not substitute its business judgment for that of a company's, in evaluating prudence. The issue would only be whether the Companies acted reasonably, not whether they made the perfect decision. No company, regulated or unregulated, can predict the future or make the right decision every time, and holding a utility to a standard of perfection, or "what would I have done under similar circumstances," is inappropriate. Resp. Ex. 17.0, pp. 18-19. Even Dr. Steinhurst acknowledged at the hearing that the test is whether management made a reasonable decision, not the "best possible decision". Joint Tr. 504-05 (Steinhurst). The evidence is overwhelming that the Companies acted reasonably.

C. Relationship of Illinois and federal law and jurisdiction

"FERC has exclusive authority to determine the reasonableness of wholesale rates." *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 371 (1988); see also

New York v. Federal Energy Regulatory Comm’n, 535 U.S. 1, 18-19 (2002) (the “text of the FPA gives FERC jurisdiction over * * * the sale of electric energy at wholesale in interstate commerce”). And, “States may not bar regulated utilities from passing through to retail consumers FERC-mandated wholesale rates.” *Mississippi Power & Light*, 487 U.S. at 372; see also *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 966, 972-73 (1986) (“When FERC set a rate between a seller of power and a [utility] wholesaler-as-buyer, a State may not exercise its undoubted jurisdiction over retail sales to prevent the [utility] wholesaler-as-buyer from recovering the costs of paying the FERC-approved rate”).

As the Supreme Court unequivocally explained, the FERC’s exclusive jurisdiction over wholesale rates “binds both state and federal courts and is in the former respect mandated by the Supremacy Clause.” *Mississippi Power & Light*, 487 U.S. at 371. “Once FERC sets such a rate, a State may not conclude in setting retail rates that the FERC-approved wholesale rates are unreasonable.” *Nantahala Power & Light*, 476 U.S. at 966 (1986). Rather, a state must “give effect to Congress’ desire to give FERC plenary authority over interstate wholesale rates, and to ensure that the States do not interfere with this authority.” *Id.* The ICC has in fact recognized this constraint on its “own jurisdiction and authority,” explaining to the General Assembly that “the Commission must rely on the Federal Energy Regulatory Commission (“FERC”) to ensure reasonable prices in the wholesale electricity market and adequate provision of open access transmission service.” *Assessment of Retail and Wholesale Market Competition in the Illinois Electric Industry in 2001*, at 11 (ICC April 2002), *available at* <http://www.icc.illinois.gov/ec/docs/020421genrep.pdf>.⁷

⁷ In the realm of wholesale pricing, all that the ICC lawfully may do is determine the *procedure* through which a retail utility selects a particular wholesale transaction from available options. See *Mississippi Power & Light*, 487 U.S. at 372; *Nantahala*, 476 U.S. at 970; *General Motors Corp. v. Illinois Commerce Comm’n*, 143 Ill. 2d 407, 421 (1991).

For over a decade, FERC has allowed wholesale providers of electricity to sell at market-based prices, provided that the seller does not possess market power, and today most wholesale power transactions in fact occur at market-based prices. *See, e.g., Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 F.E.R.C. ¶ 61,218, 62,142-43, 2003 WL 22753148, at **2-3 (2003); *Progress Power Marketing, Inc.*, 76 F.E.R.C. ¶ 61,155, 61,919, 1996 WL 436586, at **1 (1996); *Heartland Energy Svcs., Inc.*, 68 F.E.R.C. ¶ 61,223, 62,060-61, 1994 WL 415138, at **14 (1994). The upshot of the Supreme Court’s and the FERC’s relevant pronouncements is that the ICC cannot (i) set wholesale prices itself, (ii) bar utilities from buying or selling electricity at market-based prices, or (iii) prevent utilities from passing on to consumers their costs of obtaining electricity at market-based rates. *See Mississippi Power & Light*, 487 U.S. at 371-72. As the Illinois Supreme Court has explained, under conflict preemption principles, “state law [must] yield where it ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,’ as manifested in the language, structure and underlying goals of the statute at issue.” *Orman*, 179 Ill. 2d at 296-297 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); *see also In re Marriage of Crook*, 211 Ill. 2d 437, 452 (2004) (“it is not the province of our court – or of any state court – to interfere with the federal scheme, no matter how unfair it may appear to be”).

In the circumstances present here, those limitations mean that neither the ICC nor the Governor nor the General Assembly has any power to determine that wholesale prices, as determined by the proposed auction (or any other mechanism), are too high and order suppliers to reduce them. To the extent that any party may advocate that the ICC adopt a construction of the PUA that would permit the ICC (or any other state official or body) to take such action, that proposed construction should be rejected because “an interpretation which renders a statute

unconstitutional or otherwise invalid should be discarded.” *Northwest Airlines, Inc. v. Department of Revenue*, 295 Ill. App. 3d 889, 893 (1st Dist. 1998); *see also Harris v. Manor Healthcare Corp.*, 111 Ill. 2d 350, 363 (1986) (“a statute will be interpreted so as to avoid a construction which would raise doubts as to its validity”); *Continental Illinois Nat’l Bank & Trust v. Illinois State Toll Highway Comm’n*, 42 Ill. 2d 385, 389 (1969) (“It is our duty to construe acts of the legislature so as to affirm their constitutionality and validity, if it can reasonably be done”).

D. References to Post 2006 Initiative reports and results

The procurement process incorporated in the Ameren Companies’ tariffs and testimony is the result of an unprecedented collaborative effort that the Commission properly commended in its report to Governor Blagojevich and The Illinois General Assembly. The Ameren Companies have listened to the views of all parties, has responded to the widespread support for an open, transparent, market-based procurement approach and is pleased to be able to prepare tariffs including just such a process in this proceeding. The Commission provided, through Post 2006 Initiative workshops, a means by which the Commission could begin examination of “a host of interrelated questions regarding changes in rates, energy assistance, the state of competition, and how utilities will procure power and energy to meet their continuing service obligations.” Post 2006 Staff Report, p.1. The Commissioners organized six working groups, comprising stakeholders, to raise, examine, and discuss these interrelated questions. The working groups were instructed to try to “achieve consensus on as many substantive issues as possible.” *Post 2006 Initiative Process — “Rules of the Road,”* at 2 (March 31, 2004).

Upon conclusion of the Post 2006 Initiative workshops, each working group issued reports, as did Staff, for purposes of issuing “practical recommendations.” Post 2006 Staff Report, p.1. Each report is now publicly available on the Commission’s website. These reports

detail group consensus on substantive issues, as well as “a precise definition of the remaining issue and a list of the possible resolutions (without attribution).” *Post 2006 Initiative Workshop Process* — “*Rules of the Road*,” at 2 (March 31, 2004). Each workshop participant knew that the main purpose of the workshops was, in fact, to achieve such consensus:

It is reasonably foreseeable that issues discussed in Working Group sessions and in written material circulated among Working Group participants will or may become the subject of future proceedings. Meetings of the Working Group are being conducted for the purpose of defining the critical post-transition issues and determining how best to meet the requirements of the Act and the legitimate needs of all participants in the Illinois retail and wholesale electric markets, including electric utilities, alternative retail electric suppliers, consumers, independent power producers, and others. It is also hopeful that the Working Group sessions will resolve or narrow issues that might otherwise be the subject of the above proceedings.

(Confidentiality Agreement, *available at* <http://www.icc.illinois.gov/ec/ecPost.aspx>.)

In the spirit of the expressed purpose of the Post 2006 Initiative process, the Ameren Companies have relied upon the results of the workshops in defining and shaping the tariffs proposed in these proceedings. (Nelson Sur., Ex. 17.0, p.6.) Such reliance was undertaken as a prophylactic measure, in hopes of minimizing disagreement in these proceedings by incorporating into the proposal certain pre-settled issues and consensus components. In that spirit, and in the spirit of providing necessary context for these proceedings, witnesses for the Ameren Companies have offered specific testimony regarding Post 2006 Initiative workshop results, and the role that such results have played in designing the tariffs at issue. (*See, e.g.*, Baxter Dir., Ex. 1.0, p. 5; Nelson Dir., Ex. 2.0, pp. 35-38; Nelson Sur., Ex. 17.0, pp. 4-8.)

As a final note, the Ameren Companies are in full agreement that the ALJ must not allow statements made and positions taken during the process to be used against any party in this

docket. The Ameren Companies wholly support enforcing the confidentiality protection of the workshop process, which is provided in the workshop preamble:

In order to facilitate free and open discussions the stakeholders wish to assure that statements made, positions taken, and documents and papers provided by the stakeholders in the Post 2006 Initiative Process will not be used by the stakeholders in any subsequent litigation, including administrative proceedings before the Illinois Commerce Commission, the Federal Energy Regulatory Commission, and other federal, state, or local governmental authorities.

(Workshop Preamble, *available at* <http://www.icc.illinois.gov/ec/ecPost.aspx>.) The confidentiality protection provided in this passage would certainly bar a stakeholder from using statements made or positions taken by another stakeholder against that stakeholder in any subsequent litigation. The Ameren Companies have endeavored to adhere to the letter and spirit of the workshop preamble in preparing for and presenting its case.

E. Evidentiary issues

The Ameren Companies do not believe there are any outstanding evidentiary issues.

F. Other legal issues

On September 2, 2005, the Governor of the State of Illinois, Rod R. Blagojevich, filed a letter in these proceedings that essentially threatened each individual Commissioner with termination of his or her employment. That letter stated: “I consider an approval of a reverse auction procurement process of market-based rates for wholesale power either a serious neglect of duty or gross incompetence by the ICC. I will take whatever action is necessary to protect the public and ensure that the law is followed.” Governor Rod R. Blagojevich, letter of September 2, 2005. This language is an unmistakable threat, as it tracks verbatim the constitutional standard for removal of a Commissioner: “The Governor may remove for incompetence, neglect of duty,

or malfeasance in office any officer who may be appointed by the Governor.” ILL CONST. Art. V, § 10.

Article II, Section 1 of the Illinois Constitution provides that the legislative, executive, and judicial branches must remain separate, and that “No branch shall exercise powers properly belonging to another.” ILL CONST. Art. II, § 1. Article V of the Illinois Constitution provides the Governor with limited, enumerated powers regarding his executive authority with respect to the legislative branch and administrative agencies. *See, e.g.*, ILL CONST. Art. V, §§ 11, 13. Article V does not provide that the Governor may determine the individual outcome of an ICC proceeding, via threatening letters or otherwise.

The Commission is an independent, quasi-judicial, quasi-legislative body, created by the General Assembly through its constitutional authority. *See Illinois Commerce Comm’n v. New York C. R. Co.*, 398 Ill. at 17 (1947). Through the PUA, the General Assembly has established strict legislative guidelines to preserve the Commission’s independence and impartiality. For example, Section 10-103 requires that all Commission decisions must be based exclusively on the evidentiary record. 220 ILCS 5/10-103; *see also Illinois Commerce Comm’n v. New York C. R. Co.*, 398 Ill. at 17 (holding that the ICC’s decisions must be supported by a reasonable basis in law and fact, in order to withstand judicial review). Further, a Commissioner must disqualify himself or herself from a proceeding in which his or her impartiality might reasonably be questioned. 220 ILCS 5/2-108; *see also Business & Professional People v. Barnich*, 244 Ill. App. 3d 291, 297 (1st dist. 1993). The Commission’s Rules further emphasize and strive to protect the complete independence and integrity of the Commission. *See, e.g.*, 83 Ill. Admin. Code § 100.20(b)(2-6) (stating that Commissioners must avoid (1) “[g]iving preferential treatment to any interested party,” (2) “[i]mpeding government efficiency or economy,” (3)

“[l]osing complete independence or impartiality,” (4) “[d]iscussing impending Commission decisions outside office channels,” or (5) adversely affecting “the confidence of the public in the integrity of the Commission.”).

The Governor is without constitutional authority to determine or affect the Commission’s decisions of law and fact in these proceedings. The Governor’s attempt to do so is inappropriate and violates Article II, Section 1 of the Illinois Constitution. For all these reasons, the ALJ and the Commissioners must disregard Governor Blagojevich’s improper attempt to command an illegal outcome in these proceedings, pursuant to the Illinois Constitution, the PUA, and the Commission’s Rules.

IV. SUFFICIENCY OF THE COMPETITIVE MARKET

CUB and the AG both contend that the “wholesale market” is too flawed to be relied on as a basis on which to establish retail rates. They offer no meaningful evidence for their position, and are unable (or unwilling) even to define the scope of the market to which they refer. They do not think that the market is too flawed to serve as a source of power for the Ameren Companies, however, and readily acknowledge that the Ameren Companies have no other available source of power to provide the service that their customers seek. They just do not want customers to have to pay for it. They prefer that customers pay some other (read, lower) cost -- apparently regardless of whether there is an actual source for power at the other (unidentified) cost.

As we have explained before, and will undoubtedly have to again, this is fantasy. There is no world in which the State can compel the Ameren Companies to buy high and sell low. The record does not show that there is any lower cost source of supply available to the Companies, or that there is any material flaw in the wholesale markets. The fact is (and it is a fact studiously overlooked by CUB and the AG) that FERC has authorized sellers to sell at the prices that CUB

and the AG dislike precisely because FERC (which has jurisdiction over such matters) has found that the sellers do not have market power and cannot exact unreasonable prices. There is nothing this Commission can do about those findings, and the CUB/AG complaining about the wholesale markets can be filed under “irrelevant.”

In particular, CUB witness Fagan and AG witness Rose have presented virtually no information that is relevant to the issues in this proceeding, which involves whether the Ameren Companies’ CPA proposal should be used to procure the supplies needed by the Ameren Companies to provide Basic Generation Service (BGS) post-2006. Resp. Ex. 13.0, p. 3. Rather, the testimony of these witnesses, by and large, discusses their view of certain competition and market power-related topics that will not be affected by whether or not the Ameren Companies’ CPA proposal is implemented. In addition to being irrelevant, the discussion of these witnesses frequently is wrong or incomplete.

A. Markets’ relationship to auction process

What is important is that the markets have sufficient generation to support the auction. As discussed in Section V.F, *infra*, there is more than adequate capacity available to make the auction work.

As discussed in several other places in this Initial Brief, CUB and the AG argue that the wholesale market is not competitive enough to support an auction. The AG offers no alternative; CUB offers only vague and unexplained suggestions that the Companies instead acquire other competitive products from the same competitively flawed markets. As will be explained in this Section IV, the wholesale market is not flawed, as FERC has found. Moreover, it is the only source of supply that the Ameren Companies have. There is no alternative, and the auction is the best means of obtaining the lowest price at wholesale.

B. Other jurisdictions' experiences with competitive electricity procurement

Ameren witnesses LaCasse, Pfeifenberger and Nelson discussed other jurisdictions' experiences with competitive electricity procurement.

Mr. Pfeifenberger performed a survey of other states' experiences with competitive electricity procurement. He explained that most restructured states use two general procurement models, which he labeled the "standard offer approach" and the "portfolio management approach." Resp. Ex. 7.0, p. 5. The survey of procurement approaches in restructured states showed that : (1) nine jurisdictions (including the District of Columbia) use variations of the vertical tranche approach for the post-transition procurement of regulated service supplies ; (2) six states use variations of the portfolio management approach for such procurement; and (3) six states either cannot easily be categorized into one of the two general approaches or have not yet made a decision on post-transition competitive procurement. This review also shows that the vertical tranche approach is the predominant procurement methodology for utilities in states facing policy issues similar to those in Illinois, where : (1) generation assets are no longer cost-of-service regulated ; (2) retail access has not been limited or suspended ; and (3) restructuring has moved beyond the transition period during which retail rates for regulated service generally were frozen.

Under the standard offer approach, which is referred to within the Commission's Post - 2006 Initiative as the "vertical tranche" approach, the regulated utility competitively procures power from suppliers under standardized full requirements contracts. Each of these contracts either supplies a defined portion (e .g., a fixed percentage or "tranche") of the utilities' regulated service obligation for a defined set of customers (e .g ., residential and small business customers). Wholesale suppliers voluntarily undertake the day-to-day responsibility for the resource procurement and portfolio/risk management functions for the distribution company's

regulated service load. The utility's role primarily involves developing the competitive procurement process, obtaining state regulators' approval of the plan, and executing the process on generally an annual basis. They also continue to administer the resulting supply contracts, maintain customer care and billing functions, and be the provider of last resort in case of supplier default. *Id.*

In contrast, under the portfolio management approach, the utility retains the day-to-day responsibility for directly procuring resources, managing price and volume risks, and providing full requirements, load-following service for its regulated service customers. This generally would be done according to fairly flexible but commission-approved procurement processes. The contracts within the utility's portfolio could be a variety of energy and capacity products (e.g., baseload, peakload, capacity release option, load following, and ancillary service contracts) of various durations and flexible pricing methodologies tailored to meet the expected demand for regulated service at reasonably stable costs. Resp. Ex. 7.0, pp. 5-6.

As Mr. Nelson explains in his testimony, the Ameren Companies used this review of the experience in other restructured states in its contributions to the Commission's Post 2006 Initiative, and in developing the Post-2006 framework for the Ameren Companies that was presented to and discussed with Commission Staff and other Stakeholders.

The Ameren Companies' procurement proposal is based on the "vertical tranche" or standard offer approach. Mr. Pfeifenberger explained that, based on his review of other states' experiences, the vertical tranche approach offers a more transparent, less contentious process, provides a better allocation of risk, and is used in more retail access states facing policy issues similar to those in Illinois. Resp. Ex. 7.0, p. 6. In particular, the vertical tranche approach is exceptionally transparent because the procurement of standardized supply products (i.e., shares

of full requirements service for different customer classes and varying contract durations) allows for the full pre-specification and approval of the procurement and evaluation process without the need to apply additional judgment or require additional negotiation within the procurement process . This means all price, non-price, and bid evaluation issues can be fully resolved and specified prior to conducting the actual procurement process . This full pre-specification and pre-approval of the procurement process not only increases transparency, which is particularly important in the context of participation by affiliated suppliers, but it also typically results in a less complex, less contentious regulatory process. Resp. Ex. 7.0, pp. 7-8. As both Mr. Pfeifenberger and Mr. Nelson explained, the transparency and competitiveness of the vertical tranche approach also have been able to avoid concerns over compliance with FERC’s affiliate sales requirements. Resp. Exs. 7.0, p. 8; 9.0, pp. 43-44.

Dr. LaCasse described the details of the New Jersey auction, from which she has been Auction Manager. There have been no problems with the auction since its inception.

C. Retail market conditions

CUB and AG argue that it is inappropriate to allow the Ameren Companies to establish rates that recover their wholesale power costs unless and until there is competition for residential customers in their service territories. This is both illogical and contrary to law.

CUB and AG’s complaint is that residential customers should not be subject to wholesale rates unless they competitive alternatives. Regardless of what CUB and the AG may think about this, the law is clear that the Ameren Companies are entitled to recover their legitimate cost of service. Again, the Ameren Companies possess no meaningful level of capacity. If residential customers’ lights are to go on when they flip the switch, the Ameren Companies must purchase supply at wholesale. The cost of the supply purchases is what the Ameren Companies are entitled to recover, and what they must recover if they hope to stay in business.

As discussed above in Section II.B.1, the PUA requires the ICC to establish retail rates that reflect the Ameren Companies' reasonable and prudent costs of providing retail service. *See* 220 ILCS 5/9-101, 9-211. As also discussed, under the ratemaking standards of Article IX that continue to apply to the proposals at issue, the ICC may approve tariffs that automatically pass through to retail customers the prudently incurred costs a utility incurs purchasing commodities in the wholesale market, as the Companies' proposed tariffs provide. *See City of Chicago*, 13 Ill.2d at 608-09, 619; *see also Citizens Utility Board*, 166 Ill.2d 111 (1995).

This is no abstract legal argument. What CUB and the AG are suggesting is that the ICC set rates below the actual cost of procuring power. The Ameren Companies cannot sell at a loss and somehow make it up on volume. If more cash goes out the door to power suppliers than comes in the door from customers, a degree in finance is not required to determine that there will be an adverse effect on the utilities. The magnitude of the effect is a function of the magnitude of the shortfall.

Further, even if the status of residential competition were somehow relevant (which it is not), there is no evidence in the record that residential customers would somehow do better under a competitive retail rate than under a competitive wholesale rate. Not many consumers scramble to pay a retail price when a wholesale price is available instead. The CUB-AG position assumes that, at some point, prices will be available to them at retail that are lower than the prices at wholesale that the Ameren Companies can obtain. Why this would or could be so is left totally unexplained.

D. Relevant product market

1. Required products

The required products are, in the initial auction, one-, two- and three-year requirements contracts for 50 MW tranches, and in subsequent auctions, three-year requirements for 50 MW

tranches. There is no evidence that these products are unavailable or that any seller or group of sellers dominates the market for these contracts.

2. Physical vs. financial markets

3. MISO capacity market

Mr. Fagan also argued that, because there is mostly no MISO-administered installed capacity market, “some generation units must rely solely on energy and ancillary service provision revenues to recover fixed costs” which, in turn, “can lead to higher energy market prices.” CUB Ex. 1.0, p. 9. Mr. Fagan’s testimony about the absence of MISO-administered installed capacity markets is a red-herring in the context of this proceeding and does not raise any competitive issues. Resp. Ex. 13.0, p. 9. If the absence of such centralized installed capacity markets presents any real problems, those problems will be just as present under any alternative BGS supply procurement regime as they will be if the Ameren Companies’ CPA proposal is implemented. *Id.*

Moreover, not only does Mr. Fagan’s testimony on this topic represent a red-herring, it is also incomplete and/or wrong. One reason is Mr. Fagan’s unstated assumption that if generating resources do not receive capacity payments through MISO-administered capacity markets, they will not receive any capacity payments at all. Mr. Fagan explained that is not correct because capacity can be sold in bilateral capacity markets, not only through a MISO-administered market. Resp. Ex. 13.0, p. 9. Even if there were a MISO-administered capacity market, it is reasonable to think that a large quantity of capacity still would trade bilaterally anyway. Finally, even ignoring that there are alternative mechanisms for generators to receive capacity payments even today, Mr. Fagan’s expressed concern about higher energy market prices ignores that the very capacity payments required to make the energy market prices lower will impose an additional cost on customers. That is, customers are not interested in just lower energy market

prices (Mr. Fagan's focus), but lower prices for the package of electricity products they need (in this example, both energy and capacity). The lower energy market prices that Mr. Fagan speaks of are not necessarily lower prices on an overall basis when the need for explicit capacity payments also is considered. *Id.*

E. Relevant geographic market

1. Significance of political boundaries

There appears to be complete agreement amongst the parties that political boundaries have no significance to electrons. For example, Dr. Rose initially implied that there were problems in the "Illinois" wholesale market, but could not retreat fast enough from that definition of the market. Joint Tr. 654 (Rose). Indeed, the AG's counsel pressed Mr. Frame to agree that Dr. Rose, who referred to an "Illinois regional market" (whatever that is) did not indicate that Illinois was the relevant market. Tr. 322-334.

The Ameren Companies believe that the relevant market is MISO. As CUB witness Fagan admitted, "in FERC's most recent rulings on how to look at granting market-based rate authority, its default for regions served by an RTO is the entire RTO region." Joint Tr. 361 (Fagan). As Dr. McNamara of the MISO explained, there are approximately 120,000 MW of generation in MISO deliverable into the Ameren service territory. Resp. Ex. 9.0, p. 10. These megawatts do not recognize state boundaries, and the market should not be defined as if they do.

2. MISO /PJM seam & Joint Operating Agreement

CUB witness Fagan asserts that the PJO-MISO seam presents a problem but without any attempt to quantify the significance of this problem. Those concerns, whatever their validity, would apply equally if the Ameren Companies' proposed CPA is implemented or if any alternative to it is implemented. Resp. Ex. 13.0, p. 10. Accordingly, issues concerning the PJM-MISO "seam" are simply not relevant in trying to decide whether the Ameren Companies' CPA

should be used to procure electricity supply for BGS post-2006. In the context of this proceeding, expressed concern about the effects of the PJM-MISO seam is just another of Mr. Fagan's red herrings. *Id.*

It also appears that Mr. Fagan has overstated the significance of the PJM-MISO seam. There is more than 120,000 MW of generation capacity within MISO that is deliverable to MISO load. Even if the PJM-MISO seam absolutely precluded generators in PJM from bidding in the Ameren Companies' proposed CPA, which even Mr. Fagan does not claim is the case, the generation just located within MISO should be more than sufficient to support CPA bidders' requirements. Resp. Ex. 13.0, p. 11. As well, to the extent that seams concerns arise because of "pancaking" of transmission charges, that concern already has been eliminated. *Id.* The transmission charge for delivery to a MISO sink is the same whether the source is in PJM or MISO. Also, there is a Joint Operating Agreement (JOA) in place between PJM and MISO that provides for certain coordination between the two Regional Transmission Organizations, including, among other things, the exchange of data concerning TTC, ATC and AFC computations, the coordination of outages, and seeking to make LMP computations consistent. *Id.* Mr. Fagan failed to discuss how or why the provisions of the JOA are not adequate to address at least some of his seams-related concerns.

F. Market characteristics, including supplier concentration

Whatever the relevant market is, Mr. Fagan and Dr. Rose are certain it is not up to the task. Both Fagan and Rose believe that MISO is insufficiently developed to be relied on. Both witnesses also suggest that the market (whatever and wherever it is) is too concentrated to produce reasonable prices. What is most notable about their positions is how utterly devoid of supporting evidence (or logic) those positions are.

Mr. Fagan testified that “the relative immaturity of the MISO spot energy markets and the insufficient scope of capacity and ancillary service structures in MISO [will] result in a high level of uncertainty concerning the competitiveness of the MISO spot energy markets” and that this will affect “the ability of potential auction participants to secure competitively priced supplies from the MISO region...” which will exert “upward pressures on prices in the proposed competitive procurement auction.” CUB Ex. 1.0 at pp.3-4. He also testified that the “seam” between the MISO and PJM “presents a barrier to effective trade between regions” which will deny “Central and Southern Illinois residents the benefits of a cohesive, integrated wholesale marketplace for electricity purchase by prospective retail suppliers.” *Id.* at 4. Finally, he claimed that “existing market monitoring and mitigation rules in place in MISO and PJM are insufficient to address the potential exercise of wholesale market power in the Illinois region and the resulting increase in prices likely to be seen in the proposed competitive procurement auction.” *Id.*

Similarly, Dr. Rose asserted that “the wholesale electricity market in and around Illinois is not sufficiently developed, at this time, to ensure a level of competition among suppliers that would yield competitive prices” and that “there are insufficient safeguards in place to prevent the exercise of market power and inadequate market monitoring mechanisms in place to warrant reliance on the wholesale market to determine retail prices.” AG Ex.1.0 at pp. 3-4. He claimed that “[i]mplementing a market-based approach to procurement and ratemaking, before the wholesale market is sufficiently developed, will be harmful to retail customers who will face higher rates than under alternative, cost-based approaches.” *Id.* at 4.

Mr. Frame explained that, most importantly, it is difficult to see how any relative immaturity of the MISO’s electricity markets has any relevance to issues concerning how the

Ameren Companies will procure electricity to meet their BGS obligations during the post-2006 time period. Resp. Ex. 13.0, pp. 5-6. That is, the relative maturity of the MISO's electricity markets is what it is and will be precisely the same whether the Ameren Companies' proposed CPA is used to procure supply to provide BGS during the post-2006 time period or whether some other procurement vehicle is used, such as a Request for Proposal (RFP) process or bilateral contracting. *Id.* at 6. To the extent that the supposed immaturity of the MISO's markets somehow causes prices to be "too high" in some sense under one procurement regime, it will also cause prices to be "too high" under another procurement regime. The auction proposal neither creates nor exacerbates the supposed problem. *Id.*

Moreover, when the Ameren Companies who do not presently own the generation capacity needed to provide BGS, go to the market to procure supply, they can expect to pay the market price no matter what procurement system they use. *Id.* Resp. Ex. 13.0, p. 6. If the market in which they purchase is "less-than-perfect" in all respects, then that is the way it is, but it is that same way for the proposed CPA and any other alternatives. *Id.* There should be no reasonable expectation that any alternative to the CPA will somehow allow supplies to be purchased at less-than-market prices. If Mr. Fagan and Dr. Rose believe that there is some way for the Ameren Companies to purchase at less-than-market prices, they did not outline how this might occur, but any such assumption would not be reasonable.

Mr. Frame also explained that it is likely that Mr. Fagan and Dr. Rose have overstated their concern about the relative maturity of the MISO markets. Resp. Ex. 13.0, p. 7. To be sure, the MISO "Day 2" markets began operation only on April 1, 2005, and market-based bids have been used only since June 1, 2005.⁸ But the MISO is not implementing an untried system. In

⁸ During the first 2 months of operation of the MISO's Day 2 markets, cost-based bids were used.

this country, there is substantial experience in PJM, New York and New England with systems similar to what MISO is implementing (e.g., the use of centralized, security constrained economic dispatch, locational marginal prices or LMPs, financial transmission rights or FTRs and independent market monitoring and mitigation), and it is reasonable to think that MISO will learn from the experiences in these other areas. *Id.* Moreover, even if there are some minor and temporary problems during the initial operation period, the MISO and market participants should have ample time to make whatever adjustments are required in the 21 month period that they will have between the beginning of Day 2 markets on April 1, 2005 and the January 1, 2007 date at which supplies procured under the CPA will be used to provide BGS. *Id.* Neither Mr. Fagan or Dr. Rose identified any debilitating factors that would prevent this. *Id.*

Also, the MISO Day 2 markets do not represent the only trading vehicle available to parties that might wish to bid in the CPA process. Mr. Frame explained that market participants in and around the MISO footprint have bought and sold electricity “for years” under market-based pricing rules using bilateral arrangements. Resp. Ex. 13.0, p. 7. Inevitably, they will continue to do so. The MISO Day 2 markets provide an additional trading option for those parties, but it is not the only vehicle that is available to them. It is also not the only option available for parties wishing to assemble the bulk power resource package that they need to be able to support bids in the CPA process. *Id.* at 7-8. In any case, the MISO Day 2 markets do not need to be fully mature and perfect in every respect in order for them to provide some incremental value to auction participants. *Id.* at 8.

Mr. Fagan also asserted that, unlike PJM, the MISO does not currently operate centralized regulation and operating reserves markets and that this results in a less efficient unit commitment and dispatch. CUB Ex. 1.0, p. 7. Mr. Frame explained that, while it is true that the

MISO does not currently operate centralized regulation and operating reserves markets and that, when MISO is able to implement such markets, more efficient commitment and dispatch may ensue, this same situation will exist whether the Ameren Companies' CPA proposal is adopted for procuring post-2006 supplies to provide BGS during the post-2006 time period or whether some other approach is used. Resp. Ex. 13.0, p. 8. Accordingly, in the context of this proceeding, Mr. Fagan's argument is entirely a red-herring that does not raise any competitive concerns at all. Moreover, the MISO's operation does not have to be perfect in all respects in order for it to provide benefits to auction participants. *Id.*

Mr. Fagan asserts that "the pricing outcomes of the CPA are vulnerable to potential exercise of market power" and that "[t]he potential for market power to be exercised in the MISO region will have an affect [sic] on the expected prices in the MISO spot market." CUB Ex. 1.0, p. 20. But he has undertaken none of the types of analyses that might seek to demonstrate that the exercise of market power within the MISO region, and within the area that entities that will bid in the proposed CPA can procure supplies to support their bids, really is a significant problem. Among other things, such an examination might include an analysis of transmission into Central and Southern Illinois, a structural analysis of generation capacity available to serve entities that might bid in the CPA, an analysis of pricing data and an examination of important MISO procedures and features. In fact, when these considerations are examined, it does not appear that those that own generation capacity that might, directly or indirectly, be used to support bids in the CPA process, will be able to exercise such market power.

As concerns the ownership of generation capacity, Dr. McNamara has testified in this proceeding that there are more than 121,000 MW of generating capacity within the MISO

footprint that are “deliverable” throughout MISO including to Central and Southern Illinois (Resp. Ex. 9.0, p. 10). Moreover, the ownership of generation capacity within the MISO footprint is “unconcentrated” when determined using the Herfindahl-Hirschman Index (HHI).⁹ This large amount of generation capacity (even before including potential imports), coupled with low market concentration, is fundamentally inconsistent with any realistic market power concern.

Mr. Frame cited recent pricing data contained in the Rebuttal Testimony of William H. Hieronymus in Docket No. 05-0159 as also inconsistent with the view that market power concerns are likely. Dr. Hieronymus compares the average prices at two PJM (Chicago and AEP) and two MISO (Illinois and Cinergy) hubs for the three months (April-June 2005) that the MISO’s Day 2 markets have been in operation. He finds that the AEP hub prices are the lowest, at \$38.92 per MWH averaged across the three month time period, but that the prices at the other three hubs are not much greater, only 1.5 percent more at the Chicago hub, only 2.0 percent more at the Illinois hub and only 2.7 percent more at the Cinergy hub. (ComEd Ex. 15.0 at Lines 330-335) While no single piece of information is likely to dispose of important market power questions unequivocally, that these average prices are relatively close also is inconsistent with the notion that market power over generation supplies available to CPA participants is likely to be a problem. Dr. Hieronymus’ pricing information suggests that the geographic market in which CPA participants can buy their requirements is relatively broad and market power

⁹ See, e.g., the 2004 State of the Market Report of the Midwest ISO, June 2005, at page 10, where the HHI in the MISO region is reported to be 345. The HHI is a concentration measure computed by summing the squared market shares of the individual firms in the market. A market with 10 equally-sized competitors has an HHI of 1,000, i.e., $10 \times 10^2 = 1,000$; a market with 4 equally-sized competitors has an HHI of 2,500, i.e., $4 \times 25^2 = 2,500$. Under the joint US Department of Justice-Federal Trade Commission Horizontal Merger Guidelines (*Merger Guidelines*), a market is considered to be “unconcentrated” when the HHI is less than 1,000.

concerns are simply much less likely in broader as opposed to narrower markets. Resp. Ex. 13.0, p. 15.

G. Transmission constraints

The evidence is that Central and Southern Illinois is not encumbered by significant transmission constraints. The MISO's independent market monitor has examined the potential for transmission constraints within the MISO footprint to create market power problems and has determined that the Central and Southern Illinois area should not be classified as a Narrow Constrained Area¹⁰ where more severe market power mitigation measures would be appropriate. To the extent that market power concerns do arise as a result of transmission constraints affecting Central and Southern Illinois, the appropriately less-stringent standards for Broad Constrained Areas in MISO would apply. Dr. Ronald R. McNamara, the MISO's Vice President of Market Management and Chief Economist, testified that "... Illinois is a relatively uniform market area with few major transmission constraints" Resp. Ex. 9.0, p. 10. Moreover, the "Midwest ISO Summer 2005 Coordinated Seasonal Transmission Assessment—May 2005" indicates that, with respect to AmerenIP, "[f]or projected loads and projected power factor the system is quite robust." In contrast to what can be inferred from these representations from MISO, Mr. Fagan does not provide nor cite to any evidence that suggests that transmission constraints within or into Central and Southern Illinois are likely to present any real market power problems.

¹⁰ Under the MISO's Tariff, a Narrow Constrained Area is "An electrical area that has been identified by the [Independent Market Monitor] IMM that is defined by one or more Binding Transmission Constrains that are expected to be binding for at least five hundred (500) hours during a given year and within which one or more suppliers are pivotal."

AG witness Rose argued that “it will, at best, take many years to remove transmission constraints and to reach a point where the transmission system can provide the open access needed to support a more developed competitive wholesale market.” AG Ex 1.0, p. 15.

Dr. Rose’s testimony might have relevance if it pertained to Illinois. Dr. Rose did not appear to be discussing any Illinois-specific transmission limits, but rather the results from a study that was nationwide in scope. It is difficult to see how any overall nationwide decline in transmission investment such as discussed by Dr. Rose relates either to Illinois or the Ameren Companies’ proposed CPA, especially in the face of the above-noted statements from MISO that transmission limits are not a problem in Central and Southern Illinois. Resp. Ex. 13.0, pp. 16-17. Just as is true with Mr. Fagan’s testimony, that of Dr. Rose does not provide any specific information about the inadequacy of transmission in Central and Southern Illinois.¹¹ Moreover, even if there were concerns about transmission adequacy in Illinois, which Dr. Rose does not claim to be the case, those concerns would be present under the Ameren Companies’ proposed CPA or under any alternative procurement regime. Accordingly, as with much of Mr. Fagan’s testimony, the transmission adequacy topic which Dr. Rose seeks to introduce is a red herring.

H. Limitations on generator entry

There is no evidence in the record that there are any material limitations on generator entry.

I. Relationship to service to small commercial and residential customers

See Section IV.C., Supra.

J. Market rules and monitoring

1. MISO market rules

¹¹ The only Illinois-specific transmission testimony that Dr. Rose provides is on page 13 where he appears to minimize the importance of transmission constraints, indicating that that the Illinois region’s ability to meet its near-term reliability goals “is adequate in the near term.”

CUB witness Mr. Fagan suggests that MISO and PJM market monitoring and mitigation rules are insufficient to address the potential exercise of wholesale market power in the Illinois region and the resulting increase in prices likely to be seen in the proposed competitive procurement auction. CUB Ex. 1, p. 4. AG witness Dr. Rose draws similar conclusions regarding market monitoring mechanisms. AG Ex. 1.0, at pp. 3-4.

Mr. Fagan believes that the auction would be vulnerable to the exercise of market power “absent strengthened mitigation authority.” Resp. Ex. 13, p. 11. As previously discussed, market power at the wholesale level is not relevant to whether the Ameren Companies’ auction proposal should be approved. *Id.* If market power exists within the MISO footprint, that situation will exist regardless of whether the auction proposal or other mechanism is adopted for procuring post-2006 power. *Id.* at p. 11-12. The auction will neither create nor exacerbate state of affairs. *Id.* at p. 12.

Mr. Fagan argues that the MISO’s market mitigation measures are inadequate because they allow mitigated prices to rise too much above marginal cost. This extreme position ignores both the generator’s need recover their fixed costs and general the desire to rely on market forces (rather than regulatory processes) to determine the generator’s planning and operating decisions. Resp. Ex. 13.0, p. 11. If Mr. Fagan’s approach would require mitigation not justified by realistic concerns and, inevitably, would impose burdens on market participants. *Id.*

There are other important features of the MISO’s rules that prevent the exercise of market power. *Id.* at p. 16. For instance, potential bidders can obtain FTRs and other hedges that can insulate them from the effects of local price disruptions, including price disruptions that would arise if local generators there were able to exercise market power. *Id.* Also, MISO can, under certain circumstances, order the generating capacity withheld from the market to be operated.

Namely, the MISO can require units to be operated in order to provide the needed reactive power. This might defeat the expected price rise from the withholding if the withholding of generation capacity creates reactive power problems. *Id.*

2. MISO Market Monitoring Unit (“MMU”)

3. Proposed Illinois Market Monitor

CUB proposes the establishment of an “Illinois Merchant Recruiter.” The Commission lacks authority to adopt this proposal and it should be ignored.

K. Other competitive market issues

V. AUCTION DESIGN ISSUES

A. General Effectiveness and Suitability

The Ameren Companies propose a multiple round descending clock format auction to acquire vertical tranches of power to serve their customers starting in 2007. The proposed auction process is the best method of procuring supply for the Ameren Companies’ customers in the post-2006 period. Resp. Ex. 12.0, p. 2. The Ameren Companies’ proposed auction design is a tried-and-tested, successful process to acquire power and energy. Resp. Ex. 10.0, p. 21. This process is in accord with Federal Energy Regulatory Commission (“FERC”) guidelines, and has been sanctioned by other states’ regulatory bodies.

The Ameren Companies do not own any significant amount of generation capacity. Resp. Ex. 1.0, p. 4. Accordingly, each of the Ameren Companies must purchase its supply in order to provide any generation service. *Id.* The Ameren Companies participated in the Commission’s post-2006 workshop process, during which several different models were considered. *Id.* at p. 5. As identified in the publicly available Staff report on the Post 2006 Initiative, the workshop participants identified 18 different characteristics or criteria that a

procurement method should have. *Id.* The participants ultimately reached consensus that an auction satisfied these criteria better than any other method under consideration. *Id.*

The Staff, in its report on the Post 2006 Initiative, grouped these 18 desirable characteristics of a procurement methodology into categories comprising of five overarching policy goals of the post-2006 procurement process: (1) mitigation of market structure problems; (2) provision of regulatory certainty; (3) provision of market based rates and rate stability; (4) provision of a means to convert results into traditional rate design; and (5) provision of a working procurement option by January 2007. Resp. Ex. 3.0, p. 27. The Staff's report also recommends that while the Commission should remain open to more than one procurement plan, that a New Jersey Style Vertical Tranche Auction should be encouraged for the large Illinois utilities that do not own significant generation resources. *Id.* As the Staff states in its report, vertical tranche auctions:

- provide available means of achieving the five overarching goals for a preferred procurement methodology.
- are highly transparent, and will encourage a wide range of potential BGS Suppliers, and will result in competitively priced, market based rates.
- will provide end use customers with relatively stable rates while preserving their right to choose their retail BGS Supplier if they so desire.

Id. at p. 28.

With the proposed vertical tranche auction, the Ameren Companies will obtain reliable supply at a cost that is determined as the result of competition and consistent with market conditions. Resp. Ex. 6.0, p. 80. The use of the auction to obtain longer term products (*i.e.*, 1, 2 and 3-year contracts) protects small customers from the volatility of short-term market fluctuations and promotes the participation of all market participants on a fair and equal basis. *Id.* The Ameren Companies proposal includes reasonable protections against anti-competitive

behavior and provides an objective and clear method for determining winning BGS Suppliers and final auction prices. *Id.* As proposed by the Ameren Companies, the Commission will be directly involved in and have oversight of the auction process. *Id.* These key factors show that the proposed auction is the most effective and best suited process for post-2006 power procurement.

The Ameren Companies' open auction is an effective way of eliciting the best bids when all bidders are evaluating a common market opportunity and to get competitive prices consistent with the market and can be expected to lead to the efficient allocation of the supply responsibility over the different products requested by the Ameren Companies. *Id.* at 84 The auction format is ideally suited to the procurement of different products such as those in the Ameren Companies proposal and to maximize the ability to fully subscribe each of those products. *Id.* The rules will be well specified and the bidders will be able to clearly understand how the final auction price is determined and how winning bidders emerge. *Id.* The auction format does not advantage established players or affiliates and enables prospective bidders to participate on a fair and equal basis. *Id.*

The Ameren Companies' proposal includes several competitive safeguards to protect against potential anti-competitive behaviors. *Id.* at p. 85. For example, the volume cutback provisions will promote a competitive outcome in all segments of the auction by permitting the Auction Manager to withdraw tranches from the auction where necessary. *Id.* at p. 86. The Associations and Confidential Information ("A&CI") rules will minimize the scope for anti-competitive behavior in each segment of the Ameren Companies' auction. *Id.* A section-by-section load cap set at a 35% appropriately limits the ability of any one bidder to unduly influence the outcome by restricting a bidders' ability to over-represent their interest in the

auction. The auction process is designed to harness the competition for the supply of the portfolio management services and to bring the benefits of the competition that exists in wholesale markets to the retail customers. *Id.* at p. 44. It is the best procurement process for customers regardless of the state of the wholesale markets. Resp. Ex. 12.0, p. 20.

Staff witness Dr. Salant expressly recommends approval of the use of a simultaneous descending clock auction with vertical tranches for Ameren Companies' CPA. ICC Staff Ex. 11.0, p. 6. Dr. Salant confirmed his belief that a vertical tranche auction is a useful model, especially in a market where BGS Suppliers and utilities have not previously used open bidding processes for energy procurement. *See Id.* at p 6. Other parties, including both potential wholesale suppliers and retail suppliers, support the Ameren Companies' proposed auction, including Dynegy Inc. ("Dynegy"), the Constellation Energy Commodities Group ("CCG") and the Coalition of Energy Suppliers ("CES"). *See, e.g.,* DYN Ex. 1.0, p. 6; CCG Ex. 1.0, pp. 2-3; CES Ex. 1.0, p. 2.

The Ameren Companies' proposal is the best option for meeting the post-2006 obligations. The auction will satisfy the Staff's five overarching goals. Through its design, the resultant power purchase costs to the Ameren Companies will lead to retail prices consistent with the competitive market while protecting customers from undue volatility and providing competitive safeguards. The Commission should approve the auction as proposed by the Ameren Companies.

B. Full-Requirements Product

The Ameren Companies propose to procure power through the auction of individual load shares (or "tranches") of fixed-priced, full requirements wholesale electric power supply that includes both capacity and energy. Resp. Ex. 3.0, pp. 5-8. Tranches represent a fixed percentage of BGS load for a particular group of customers. *Id.* Because it is a percentage of actual load,

the size of the tranches rise and fall with the actual load. Each tranche of BGS supply will be sized to be approximately 50 MW of peak load for the subject group. Resp. Ex. 10.0, pp. 3-4.

Full-requirements service includes energy, capacity, all losses and congestion costs, as well as any other services as may be required by the Midwest Independent Transmission Service Organization (the “MISO”), but excludes Network Integration Transmission Service (“NITS”). Resp. Ex. 6.0, pp. 55-56. As the Load Serving Entity (“LSE”), the Ameren Companies will provide NITS and acquire the necessary ancillary services. *Id.* Each BGS Supplier is financially responsible for reimbursing the Ameren Companies for the costs of ancillary services that they will acquire. *Id.* at p. 55-57.

The full-requirements product places risk management responsibility in the hands of competitive entities that are best suited to take, manage, and price these risks. *Id.* at p. 30. This allows the Ameren Companies to concentrate on what they do best – deliver energy to the end use customer and perform customer care functions. Resp. Ex. 3.0, p. 5. The full-requirements product also allows the BGS Suppliers to concentrate on what they do best – take on and manage all generation related responsibilities, including risk management. *Id.* A broad range of entities can be expected to be able to supply this product, including financial players and marketers and traders. Resp. Ex. 6.0, p. 81.

a. Provision of Ancillary Services

Under the Ameren Companies’ full requirements product proposal, BGS Suppliers are financially responsible for the cost of ancillary services. The Ameren Companies, however, will actually procure the necessary ancillary services. This proposal creates a competitively neutral position for all potential BGS Suppliers. Resp. Ex. 11.0 (revised), p. 44.

The obligation to secure ancillary services rests solely with the transmission service customer. Resp. Ex. 18.0, p. 18. Under the MISO’s tariff, the Ameren Companies are entitled to

“self-supply” certain ancillary services if, and only if, acceptable arrangements can be made. *Id.* As acknowledged by Mr. Ogur during cross examination, the MISO is not obligated to modify either its tariff or business practices to accommodate provisions in the SFC which may be in conflict, even if such changes are ordered by the ICC. OGUR Tr. p. 21. Although third-party arrangements can be used to satisfy ancillary service obligation, the transmission service customers remain financially responsible to MISO for all such arrangements. *Id.*

Staff witness Mr. Ogur proposes that BGS Suppliers be permitted to supply ancillary services to the Ameren Companies as part of the provision of BGS Supply. ICC Staff Ex. 4.0, p. 28. Staff Witness Ogur refers to this as the “self-supply” of ancillary services. This Staff proposal should be rejected. The “self-supply” of Ancillary Services is not a simple undertaking, but is complex and costly. Resp. Ex. 11.0 (revised), p. 44. Customer benefits, if any, from Mr. Ogur’s proposal likely will be very small and transitional in nature. If adopted, the situation might permit a BGS Supplier to create an undue competitive advantage for itself. *Id.* No potential BGS Suppliers express concern with the current provisions. *Id.*, *see also* Resp. Ex. 18.0, p. 35.

i. Technical Requirements

In order to “self-supply” ancillary services, various systems must be in place to monitor loads and to initiate the required BGS Supplier action. Regulation service is particularly problematic in that: (a) the subject loads must be metered in real-time and the BGS Supplier’s regulation obligation must be transmitted in real-time to the BGS Supplier; and (b) the BGS Supplier’s response to that obligation must be measurable by and visible to the control area. Resp. Ex. 11.0 (revised), p. 45.

To enable these functions, the Ameren Companies must have metering in place to allow each of the Ameren Companies’ control areas to see in real-time the load of each of the three

categories of BGS load: (a) Basic Generation Service - Fixed Pricing (“BGS-FP”); (b) Basic Generation Service - Large Customer Fixed Pricing (“BGS-LFP”); and (c) Basic Generation Service - Large Customer Real Time Pricing (“BGS-LRTP”). *Id.* This metering is not currently in place. Hence, it would be necessary to install, at a minimum, real-time metering for each Large Commercial and Industrial (“LC&I”) customer electing BGS Supply along with each customer taking service from an ARES, including, potentially, some level of residential customers. *Id.* at pp. 45-46. Putting these systems and metering in place could not be accomplished in the short time between a September auction when winning BGS Suppliers would be identified and the start of delivery in January. *Resp. Id.* at p. 46.

Making the BGS Supplier’s response measurable by and visible to the control area also is critical to the control areas. This important requirement creates additional technical issues that must be overcome before the “self-supply” of ancillary services can become feasible. For instance, BGS Suppliers will have separate load obligations for each of the three Ameren Companies’ control areas. *Id.* at pp. 46-47. Each of these control areas will make independent calculations of the required regulation response. *Id.* If a BGS Supplier chooses to use the same resource to provide these ancillary services to all three control areas, the “self-supplying” resource will be presented with three different control signals. *Id.* Understanding which control area received which portion of the control response is critical in allowing each control area to measure and monitor their specific Area Control Error (“ACE”) and ensure compliance with the control performance standards. *Id.*

ii. Undue Advantage

BGS Supplier could unduly advantage itself by “self-supplying” ancillary services if it is not required to pay all costs associated with such service. *Id.* at p. 47. Affected control areas likely would do their best to collect the direct costs associated with the equipment and changes

associated with “self-supply” from the specific BGS Supplier causing those costs. However, there may be certain costs which are not easily identifiable or assignable to particular parties. *Id.* To the extent that the complete, actual costs for arranging the “self-supply” of ancillary services are not borne by the specific BGS Suppliers electing this option, such BGS Suppliers might gain an unwarranted competitive advantage relative to other BGS Suppliers. *Id.*

iii. Limited Customer Benefits

Customers likely will not benefit from BGS Supplier ancillary service “self-supply.” The MISO only permits ancillary services under EMT schedules 3, 5, and 6 to be self-supplied. *Id.* at pp. 47-48. To benefit the consumers (by lowering the auction clearing price), all of the following must occur: (1) at least one BGS Supplier must have the desire and ability to “self-supply” one of these three ancillary services at a cost lower than the tariff rates; (2) this BGS Supplier must be willing to pass this savings on to consumers by accepting lower auction prices (rather than keep the savings for itself); and (3) that BGS Supplier must be the marginal bidder. Resp. Ex. 18.0, p. 34. If each and every one of these do not occur, consumers will not benefit from lower market prices. Even if they do occur, the amount of consumer savings will be small.¹²

A BGS Supplier desiring to provide ancillary services could participate in the MISO Ancillary Services markets once they are operational. Resp. Ex. 11.0 (revised), p. 44. Participation in MISO’s markets provides an opportunity to receive value for their abilities to provide Ancillary Services. With the expected development of MISO’s Ancillary Services market in 2006-2007, bidders will have a market in which to sell ancillary services. *Id.* In

¹² The cost-based tariff ancillary service rates range from 0.18 cents per kWh to 0.49 cents per kWh. Resp. Ex. 11.0 (revised), p. 48. Customer savings would be limited by the BGS Suppliers ability to produce ancillary services below these costs that make up only a small fraction of the wholesale price. *Id.* In other words, if all circumstances align, customers might be able to achieve savings at a very small fraction of the auction price.

Bidders also will be able to provide such ancillary services through a bi-lateral agreement as they may do today even without a centralized market. Resp. Ex. 18.0, p. 35.

There is an opportunity cost to such a “self-supply” option. *Id.* at p. 34. Providing resources to the Ameren Companies would require a BGS Supplier to hold back capacity and energy that otherwise could be sold into the markets. *Id.* at pp. 34-35. To the extent that selling this capacity and energy into the markets generates more value to the BGS Supplier than “self-supplying” ancillary services (or selling such ancillary services through a bilateral agreement as they may do today even without a centralized market), it is unlikely that any BGS Supplier will take this option. *Id.* at p. 35.

iv. BGS Supplier Forward Contract Revisions and Recovery Assurance

If the Commission determines that BGS Suppliers should be permitted to “self-supply” ancillary services, the SFC must be revised to ensure tariff compliance and cost recovery. For example, SFC provisions enabling “self-supply” should clearly indicate that the “self-supply” arrangements must comply with all applicable Transmission Service Provider tariff requirements and the requirements of the applicable Balancing Authority. *Id.* at p. 37. Additionally, the SFC should expressly disclaim any inference or suggestion that the inclusion of the “self-supply” in the SFC necessarily means that the BGS Supplier’s proposed ancillary services arrangements will be acceptable to the Transmission Service Provider or the applicable Balancing Authority. *Id.* Furthermore, the SFCs should be amended to ensure that the “self-supply” arrangements are in place with the Ameren Companies prior to the earlier of commencement of service or such time that the MISO requires the Ameren Companies to elect the ancillary services procurement method. *Id.* Finally, to ensure that the BGS Supplier incurs the full and complete cost of

electing such an option, the SFCs must be amended to accommodate the recovery of all MISO charges and other incremental costs incurred by the Ameren Companies. *Id.*

b. Identification of Resources

The SFC requires BGS Suppliers to identify the specific capacity resources being used to fulfill their SFC obligations. Staff witness Mr. Ogur expresses concerns that this obligation would require the disclosure of commercially sensitive information. *See, e.g.,* ICC Staff Ex. 4, p. 40. Mr. Ogur's concerns are unfounded. His recommendations are unnecessary. Mr. Ogur acknowledges that he is not aware if the Mid-America Interconnected Network, Inc. ("MAIN") would agree to comply with his recommendations as he made no effort to discuss this matter with them. Ogur Tr, p. 26.

Identifying capacity resources is consistent with industry practice. Resp. Ex. 11.0 (revised), p. 49; Resp. Ex. 18.0, p. 39. It does not disclose commercially sensitive information. Resp. Ex. 11.0 (revised), p. 49. BGS Suppliers are not required to indicate the resources used to satisfy their energy obligations. *Id.* The SFCs specifically allow the BGS Suppliers to fulfill their energy obligations from whatever resources they wish in any hour. *Id.*

Even if a supplier did consider this information to be commercially sensitive, BGS Suppliers have not expressed any discomfort with providing this data to the Ameren Companies in the specific context of their contractual supply obligation and with the knowledge that there are existing statutory and regulatory provisions which prohibit sharing such data with their affiliates. Resp. Ex. 18.0, p. 39. No potential BGS Suppliers have objected to the disclosure of capacity resources. Resp. Ex. 11.0 (revised), p. 50, Resp. Ex. 18.0, p. 39.

i. LSE Obligations

To perform their duties as LSEs, the Ameren Companies need to know the identity of the specific capacity resources that the BGS Suppliers will use to fulfill their obligations. Resp. Ex.

11.0 (revised), pp. 50-52. The Ameren Companies are responsible for procuring the NITS for BGS load and for identifying designated network resources (“DNRs”). *Id.* at p. 51. The MISO Tariff does allow the Ameren Companies to point to the SFCs as the DNRs. This, however, would prevent the BGS Suppliers from nominating and receiving the specific financial transmission rights (“FTRs”) that they need to hedge congestion risk from their actual capacity resources. *Id.*

The Ameren Companies must identify their specific capacity resources to MAIN, in order to satisfy MAIN’s capacity resource requirements. *Id.* at pp. 51-52. This serious obligation must not be turned over to a potentially large set of third parties.

ii. The Information Already Is Publicly Available

The capacity information required under the SFCs is available to the Ameren Companies, to their affiliates, and to other MISO market participants. *Id.* at p. 52. MISO Transmission Customers already are able to view information – including DNRs – associated with their transmission service. MISO Transmission Owners also might have access to portions of the DNR data submitted in the NITS process for planning, forecasting, and operational purposes. *Id.* Other data are available via the MISO Generator Deliverability Test Results which are publicly posted on the MISO website. *Id.* The MISO files their FTR allocations with the FERC and such filing is publicly available via the MISO and FERC websites. *Id.* This data includes the identity of the asset owner, the source, and the sink. *Id.*

Mr. Ogur’s recommendation regarding the identification of resources should be rejected. It is unnecessary and does not adequately address the Ameren Companies’ legitimate concerns regarding resource adequacy. *Id.* at p. 53. The SFC cannot compel the MISO, MAIN, or any other regional reliability organization (“RRO”) to modify their business practices and administrative systems. Resp. Ex. 18.0, p. 40. Any Commission order modifying the SFC to

permit the BGS Suppliers to withhold this information should, therefore, condition such an obligation on the Ameren Companies' ability to comply with obligations to MISO, MAIN, and any other RRO without violating any applicable law or regulation. *Id.*

C. Multiple Round Descending Clock Format

The auction format is the way in which bids are solicited and processed, the way a clearing price is determined, and the way in which winners emerge. The Ameren Companies propose that a clock auction be used. Resp. Ex. 12.0, pp. 7-8. The clock auction is an open auction format, in which bidders get dynamic information feedback throughout a multiple round process. In each round, the Auction Manager suggests prices for each product, and the bidders state the quantity they want to serve of each product at these prices. *Id.* at p. 5. A product is a load category for a given term, *e.g.*, serving the load of BGS-FP customers for a term of 17 months. *Id.* If the supply for a product exceeds the quantity needed, the price for the product ticks down for the next round. *Id.* The Auction Manager announces the new prices for the next round and a measure of excess supply left in the auction. Bidders submit new bids in the next round and the process continues until the supply equals the load to be procured. At that point, the auction closes and the auctions final prices will be set. These final clearing prices will determine the amount of payments made to BGS Suppliers. *Id.*

As described in Section V.A. above, the proposed auction process is the best method of procuring supply for the Ameren Companies' customers in the post-2006 period. The elements of the auction are designed to achieve a successful auction result for the Ameren Companies and the Illinois consumers. The key benefits of the clock auction include:

- The clock auction format, as an open auction, is an effective way of eliciting the best bids when all bidders are evaluating a common market opportunity and to get competitive prices consistent with the market;

- The clock auction, as a simultaneous auction, can be expected to lead to the efficient allocation of the supply responsibility over the Ameren Companies' different products;
- The auction format is ideally suited to the procurement of different products such as those in the Ameren Companies proposal and to maximize the ability to fully subscribe each of those products;
- The auction rules are well specified and the bidders will be able to clearly understand how the final auction price is determined and how winning bidders emerge; and
- The auction format does not advantage established players or affiliates and enables prospective bidders to participate on a fair and equal basis.

Resp. Ex. 6.0, p. 84.

Simultaneous Multiple Round Auctions are the norm for the sale of spectrum. Since 1994, the U.S. has held 53 auctions using this format. Over twenty other countries also have used this format for their spectrum auctions. *Id.* at p. 14. Open auctions also are standard features in the energy sector. Since 2000, over twenty open auctions have been conducted in the energy sector around the world. *Id.* at p. 15. Most notably, the New Jersey electric distribution companies have held open auctions annually since 2002 for the procurement of full-requirements supply for the basic generation customers.¹³ *Id.* at p. 16. The Ameren Companies' based its auction design on the tried-and-trusted New Jersey auctions. ICC Staff Ex. 2.0, p. 16.

In a multiple round auction structure bidders receive market information during the auction and can adjust their bid strategies on the basis of the learned information. Resp. Ex. 6.0, p. 11. The information received during the auction reduces the uncertainty that bidders face regarding market value and their competition. *Id.* at pp. 11-12. Reducing uncertainty leads to

¹³ The FirstEnergy Companies and Power Generation Companies in Texas also have held an open auctions in the energy field. Resp. Ex. 6.0, p. 16. Similarly, Electricite de France ("EdF") has held approximately fourteen open auctions to sell power purchase arrangements and virtual power plant and the Department of Resource Development in Alberta (Canada) has held an open auction to sell Power Purchase Arrangements in the summer of 2000. *Id.*

more aggressive bidding and drives the auction to better reflect the bidders' market value assessments. *Id.*

The multiple round auctions are transparent in that they have very well defined rules. The lowest bid wins. Bidders understand and can observe the process by which winners are chosen and the final sale price is determined. *Id.* at p. 13.

In this context, open auctions tend to select the most efficient providers. *Id.* at p. 18. Because the auction ends when bidders are no longer willing to better their offers, the bidders who do win at the end of the auction are those that are willing to serve the load at the lowest prices. *Id.* BGS Suppliers who are less able or willing to take on the risks of serving the load at a given price will withdraw from the auction at higher prices. *Id.* Those who are willing to take on the responsibility of serving the load at the final prices do so with the full knowledge of the market information that has been revealed during the auction with respect to market willingness to serve at the prices prevailing during each round of the auction. *Id.*

Open auctions also have important economic benefits when several related products are at auction, as is the case for the Ameren Companies. When several related products are included in the same auction, the resulting prices will reflect the market prices because bidders can switch their bids from one product to another as they see the prices tick down from round-to-round. *Id.* at p. 19. This switching means that the auction sets price differentials that are rational and market-driven. *Id.* The auction promotes the best match of product to the BGS Supplier because bidders are able to switch from one product to another. *Id.*

1. Load Caps

The principal objective of the Ameren Companies' proposal is to obtain a reliable supply for its customers at prices that result from competition and reflect the best prices under market conditions. *Id.* at p. 80. The best way to achieve this objective is to encourage participation in the auction and to ensure vigorous competition among bidders. The Ameren Companies included a load cap in their proposal to achieve this objective.

Load caps limit the number of tranches that a single bidder can bid and win in the auction. Resp. Ex. 10.0, p. 9. A load cap is one of the auction's competitive safeguards. *Id.* Load caps: (a) limit the influence that a bidder can have on the auction results; (b) act as a complement to the provisions for volume reduction by limiting the extent to which each bidder can inflate its interest in the auction and mislead the Auction Manager; and (c) diversify the Ameren Companies exposure to any one particular BGS Supplier's contract and credit risks, by preventing the supply agreements from being concentrated in a few large suppliers. *Id.*

The Ameren Companies propose that each potential BGS Supplier's participation in the auction be limited by a 35 % load cap. *Id.* at p. 11. The load cap would apply by company and by auction section. In other words, a bidder could bid for and receive up to 35 % of the Ameren Companies tranches in the fixed-price section of the auction, up to 35 % of the ComEd tranches in the fixed-price section, up to 35 % of the Ameren Companies tranches in the hourly priced section, and up to 35 % of the ComEd tranches in the hourly priced section. *Id.* at p. 12.

Not all parties agree with the Ameren Companies' proposal. For example, IIEC witness Brian Collins suggests that each bidder's participation in the auction not be limited by a load cap (effectively a 100% load cap). IIEC Ex. 3.0, p. 2. Dr. Salant recommends (and Dr. Sibley supports) that large bidders be permitted to exceed the load cap if they choose to be "price-takers" for those tranches above the load cap. ICC Staff Ex .1.0, p. 72.

There is no single load cap level that will ensure the effectiveness of the competitive safeguards and the success of an auction. Resp. Ex. 12.0, p. 27. Setting a load cap is a question of balance that requires the consideration of the following factors: limiting bidder participation, ability to influencing auction results, ability to over-state interest and diversification. *Id.* Evaluating a load cap level involves an assessment of each of these factors and a balance of the benefits and costs. Generally, a lower load cap could impose costs in terms of limiting participation, and these costs are weighed against the potential benefits in terms of limiting overstatement of interest, curbing influence on the auction results, and promoting diversification of the BGS Supplier base. *Id.* at p. 30.

The 100% load cap, suggested by CES witness Mr. Collins, does not achieve this balance. Although 100% has the potential benefit of providing additional opportunities for some entities to bid in a greater amount of supply, it has real costs. A 100% load cap would permit unlimited over-representation of bidder interest, would remove the discipline on bidders ability to influence the auction results, and would provide no assurance whatsoever of diversification of the BGS Supplier base. *Id.* at p. 30.

A 35% load cap does achieve the appropriate balance. Load caps at the lower end of a 33% and 50% range provide greater protection against bidders over-stating their interest early in the auction and against the influence that one bidder may have on the auction results, but would also heighten the potential risk of limiting the participation of the bulk of the anticipated pool of bidders. *Id.* at p. 34.

2. Starting Prices

The Auction Manager and Ameren Companies, in consultation with Staff, will set a minimum and maximum starting price for each segment of the auction. *Id.* at pp. 85-86. As part of the application process, bidders submit indicative offers at the minimum and at the maximum starting prices. *Id.* at p. 86. The indicative offers represent the bidders' maximum interest at each of these prices. The Auction Manager and Ameren Companies, in consultation with Staff, will set round 1 prices between the minimum and maximum starting prices. *Id.*

The minimum and maximum starting prices will be developed considering market data including energy forward prices, capacity market data as available, congestion, and wholesale transmission rates. The minimum and maximum starting prices will be set high enough to encourage participation. *Id.* at p. 87.

The exact data being used, the precise calculation of the range of minimum and maximum starting prices, and the manner in which the indicative offer data will be used to inform the setting of round 1 prices were not provided in this proceeding and should not be released to bidders. *Id.* at p. 86. Releasing this information risks harming the auction as doing so would communicate target prices to bidders. Such target prices could enable bidders to tacitly coordinate without any direct communication. With such information, bidders also might hesitate to vigorously compete at price points below these levels that they determine to be implicitly acceptable to the Ameren Companies and the Staff. *Id.* at p. 87. In contrast, there is no upside to communicating to bidders how the Staff, the Auction Manager and the Ameren Companies may value or evaluate the auction product. *Id.*

3. Bid Decrements

The tranche prices fall from round to round during the auction. The amount by which the tranche price falls is called the bid decrement. The Ameren Companies propose a simple formula by which the Auction Manager will decrement the tranche prices. This formula takes into account the amount of excess supply for each auction product. Under the Ameren Companies' proposal, all registered bidders will receive a copy of the price decrement formulas.

For the auction to work well, there must be some relationship between the excess supply on a product and the tick down on the product. *Id.* at p. 90. Staff witness Dr. Salant, however, raises a concern that bidders will use their knowledge of the decrement rules to infer the excess supply on a product-by-product basis. ICC Staff. Ex. 1.0, p. 91. Dr. Salant is concerned that if a bidder developed sufficient information to know exactly how many tranches need to be withdrawn to end the auction, the bidder could find it profitable to close the auction at prices higher than they would otherwise have been the case. *Id.*

Dr. Salant's solution to his concern is to withhold bid decrement parameters from bidders. *Id.* Dr. Salant's solution is unwise. Withholding this information likely will reduce the auction's transparency and may encourage bidders to spend time and money to out-guess the Auction Manager and other bidders. The issue is that bidders could choose to spend considerable resources and time using round-by-round data to "fit their curves" and estimate the price decrement formulas. Resp. Ex. 12.0, p. 90. This guessing game has two potentially important drawbacks. It can slow down the auction and distract bidders from more relevant analysis. *Id.* at p. 91. Also, more experienced bidders, or bidders with more resources, could achieve an auction advantage. *Id.*

In response to Dr. Salant's concerns, the Ameren Companies have proposed a revised bid decrement formula methodology. Under this methodology bidders, even if they know the price

decrement formulas, cannot infer the amount of excess supply per product. *Id.* The fact that the Auction Manager can provide the bidders with the price decrement formulas means that the drawbacks of secret parameters are avoided. (*Id.*)

The Auction Manager will develop the precise price decrement formulas and parameters in consultation with Staff after approval of the auction. These guidelines will resolve Dr. Salant's concerns and should be disclosed to registered bidders.

4. Auction Volume Reductions

Auction volume cutbacks are another of the competitive safeguards included in the Ameren Companies proposal. Auction volume cutbacks are the process by which the Auction Manager reduces the amount of power acquired in the auction if necessary to ensure a competitive bidding environment. The auction volume cutback acts as a safety net. *Id.* at p. 43. The auction volume cutback is not intended to control the alleged market power of suppliers selling their generation resources. Resp. Ex. 12.0, pp. 42-44. Its sole purpose is to address a situation where auction participation is lower than expected and where auction prices may not reach competitive levels. *Id.* at p. 84.

As part of the auction volume cutback mechanics, the Auction Manager will measure the competitiveness in round 1 of the auction by means of the "eligibility ratio" (the ratio of the tranches bid divided by the volume). *See Id.* at p. 85. If the eligibility ratio is below the target ratio, the Auction Manager will cut back the auction volume so that the new eligibility ratio meets the target. *Id.* The eligibility ratio target will be set by the Auction Manager and will depend on a number of factors, including the number of bidders or the characteristics of individual bids. *Id.* The Auction Manager can further revise the volume, if necessary to ensure a competitive bidding environment. *Id.*

In order to preserve the integrity of the auction process, two elements of the auction volume cutback guidelines have not been fully specified in this proceeding. These elements are: (a) how the target eligibility ratio will be set; and (b) how the further adjustment process will proceed. *Id.* The volume guidelines must remain confidential from bidders. *Id.* Bidders might be able to manipulate the system if bidders knew the volume guidelines. *Id.* The detailed volume reduction formulae must be kept secret from bidders to prevent unfair manipulation of the auction process. These guidelines will be developed by the Auction Manager in consultation with the Ameren Companies, and the Staff after approval of any auction.

The Commission's order should direct the Auction Manager to develop the precise volume guidelines in consultation with the Ameren Companies and Staff following approval of the auction and to keep the final guidelines confidential.

5. Portfolio Rebalancing

As a counterpart to the auction volume reduction guidelines, Dr. Salant recommends that the Auction Manager have “the discretion to increase the auction volume for products with excess supply as well as to decrease the auction volume of products for which supply offers are limited.”¹⁴ Staff Ex. 1.0 p. 60. Dr. Salant's proposal is intended to avoid the situation where one product is very competitive while another is not. Dr. Salant's recommendation, however, does not improve the auction process and likely would be harmful to that Process. Resp. Ex. 12.0, p. 59. It, therefore, should be rejected.

Under Dr. Salant's proposal, if one auction product experiences relatively little bidder interest, the excess tranches can be shifted to products experiencing relatively higher bidder

¹⁴ Dr. Salant presumably intends to apply his recommendation only to BGS-FP products in the first auction. Resp. Ex. 12.0, p. 58. This change cannot apply to subsequent auctions because there will be a single BGS-FP product. *Id.* Likewise, the change should not apply to changing the targets of the BGS-FP product and the BGS-

interest. This proposal is short sighted. The Auction Manager cannot evaluate relative interest among products at an arbitrary moment in time. Bidder interest evolves as the auction progresses. *Id.* It is not uncommon for relative interest in products to vary during the auction. *Id.* The proposed auction is designed so that the relative prices for the various substitute products are discovered through the auction and so that these relative prices track the realities of the market. *Id.* The judgment of the Auction Manager, even if exercised in accordance with a rule pre-established on the basis of expected bidding patterns, is not a good substitute for this market mechanism. *Id.*

Dr. Salant's portfolio rebalancing proposal should be rejected.

6. Association and Confidential Information Rules

Another of the competitive safeguards in the Ameren Companies' proposal is the Association and Confidential Information ("A&CI") rules. These rules limit the possibility of collusive behavior, and ensure a level playing field by limiting the possibility that a bidder will have better information than another about its competitors. *Id.* at p. 7. The A&CI rules must be accepted by bidders wishing to participate in the auction.

The A&CI rules are designed specifically for the auction format to ensure that the scope for anti-competitive behavior is minimized. *Id.* These rules have specific measures that ensure the independence of bidders, that ensure that no bidder has information about its competitors' bids, and that ensure that opportunities for coordination among bidders are minimized. The A&CI rules are managed through the qualification process to ensure that bidders that are registered to participate have every incentive to comply. *Id.*

a. Disclosure of Full-Requirements Contracts

LFP product because moving volume from one customer to another necessarily will leave one of the groups with too much power and the other with too little power. *Id.*

Dr. Salant recommends that the A&CI rules be modified to require disclosure of full-requirements contracts that are contingent on the auction outcome. ICC Staff Ex. 11, p. 41. Under Dr. Salant's proposal, if a wholesale supplier's aggregate full-requirements contracts with BGS bidders exceeds the load cap, the affected bidders would be asked to reduce their eligibility or to take some other action (including presumably withdrawal from the auction) to stay under the load cap. *Id.*

Dr. Salant's disclosure recommendation is based on two false premises. First, Dr. Salant assumes that without these disclosure requirements "a large supplier could circumvent the load cap, and hence exercise market power in the auction, even while not participating directly in the auction." ICC Staff Ex. 11.0, p. 36. Second, Dr. Salant believes that an upstream supplier offering contracts to multiple bidders is collusion – specifically, he states that: "collusive arrangements of the type I described above could undermine the integrity of Ameren's CPA." ICC Staff Ex. 11.0, p. 41.

Permitting one wholesale supplier to serve multiple bidders would not circumvent the purpose of the load cap, nor is it a collusive arrangement on its face. Resp. Ex. 12.0, p. 55. The load cap is not intended to limit a wholesale suppliers ability to sell energy on a forward basis to auction participants or to anyone else. *Id.* Collusion would exist if, after purchasing energy from the same wholesale supplier, multiple bidders communicate with each other during in the auction for the purposes of keeping prices higher than they would be if they were to compete with each other. *Id.* Collusion also would exist if these bidders communicated either directly or through their common wholesale supplier as a conduit. *Id.* Similarly, the wholesale supplier might be a conduit for collusion if the wholesale supplier specified contract provisions that ensured bidders would bid to a coordinated outcome. *Id.* at pp. 55-56. If these bidders were

aware that the others also had contracts with the same wholesale supplier (although this would not be collusion), it could certainly bias the competition at the auction since these bidders would have superior information about each other. *Id.* at p. 56. The A&CI rules cover these situations. Bidders are required to certify that they have no such communication, arrangement, or knowledge. *Id.*

Contractual arrangements can be considered extremely sensitive business information. Requiring their disclosures prior to the auction will have a negative impact on the auction process. *Id.* at p. 56-57. Bidders will be reluctant to reveal their supply sources prior to the auction, particularly if they are unaware of how this information could be effectively used to promote competition in the auction. *Id.* at p. 57. Such disclosure requirements will have a chilling effect on participation as bidders will refuse to provide sensitive business information and could increase supplier costs as suppliers enter into more complicated contracts to avoid the need to disclose. *Id.* Ultimately the preauction disclosure requirements will reduce competition or increase costs to suppliers, both of which can lead to higher auction prices. *Id.*

The load cap remains effective whether or not some bidders are supplied by a common upstream supplier. Resp. Ex. 19.0, p. 42. The load cap remains effective to limit the ability of a bidder to over-state their initial interest in the auction. *Id.* Similarly, the effectiveness of the load cap in attracting smaller or newer suppliers is not compromised. *Id.* BGS Supplier diversity is not affected by such full-requirements wholesale supply agreements.

Dr. Salant's recommended full-requirements supply contract disclosure rules are harmful. First, these rules are neither transparent nor fair to bidders. *Id.* at p. 44. Second, these rules put in place unnecessary hurdles to achieving the least-cost supply arrangements in preparation for

the auction, and likely would lead to increased auction prices. *Id.* Dr. Salant's proposed disclosure requirements should therefore be rejected.

7. Tranche size

Under the Ameren Companies' auction proposal, the Ameren Companies will acquire tranches of power to serve their BGS loads. Each tranche will account for a fixed percentage of a specific load group. Resp. Ex. 6.0, p. 54. The number of tranches for each category will be set so that the maximum size of each tranche (counting all customers on Ameren service, as well as customers served by ARES who could return to the service) is roughly 50 MW. Resp. Ex. 10.0, pp. 3-4. For example, if the BGS-LFP load is divided into 25 tranches, each and every BGS-LFP tranche accounts for 4% of the load of all BGS-LFP customers. Resp. Ex. 6.0, p. 54.

The Ameren Companies propose a nominal tranche size of 50 MW.¹⁵ This tranche size will neither unduly prejudice the efficient administration of the auction nor create a risk of gaming behavior in the auction. Resp. Ex. 10.0, p. 4. Using a 50 MW tranche size would permit auction participation by BGS Suppliers in the 50-100 MW range and would allow larger BGS Suppliers to shape their bids to better match their resources. Resp. Ex. 11.0 (revised), p. 40. The proposed 50 MW tranche size is consistent with current industry practice in the wholesale markets as they relate to the size of standard, forward-traded products. *Id.*

Ameren Companies' proposal for a tranche size of 50 MW does not present any problems for the success of the auction process. Resp. Ex. 12.0, p. 54. Staff witness Dr. Salant specifically recommends approval of the 50 MW tranche as being set at the appropriate level. ICC Staff Ex. 11, p. 16.

8. "Price-taker" proposal

¹⁵ As each tranche actually represents a fixed percentage of BGS load, the actual MW value of a tranche may vary from 50 MW from hour-to-hour. However, the Ameren Companies propose that the fixed percentage be set to achieve an expected, or nominal, tranche size of 50 MW subject to load growth and customer switching.

Dr. Salant proposes that large bidders be offered the opportunity to acquire tranches beyond the proposed load cap so long as the bidder acts as a “price-taker” for those tranches exceeding the load cap. ICC Staff Ex. 1, pp. 70-71. Under Dr. Salant’s “price-taker” proposal, if a large bidder offers to supply tranches beyond the load cap, the tranches above the load cap would be priced at the auction closing price. *Id.* at p. 72. The bidder could not withdraw those tranches from the auction regardless of how low prices fell during the auction. *Id.*

The “price-taker” bidder would be at risk of the auction closing price falling below its marginal costs. Resp. Ex. 10.0, p. 13. The bidder also would be unable to determine, for itself, where it could maximize its return on investment. *Id.* In other words, the bidder would risk either taking a loss on the transaction or achieving a less than optimum gain. *Id.*

Large BGS Suppliers likely will not utilize Dr. Salant’s “price-taker” proposal. *Id.* Instead, the “price-taker” option would act as a complicating element to the auction and create additional unwarranted administrative hurdles. *Id.* Providing such an option would subject the Ameren Companies and the Illinois consumers to increased risk of contract concentration exposure to these large BGS Suppliers. *Id.*

Allowing an entity to exceed the load cap on a voluntary basis will not lead to a better result for ratepayers. Resp. Ex. 12.0, p. 47. Bidders will exercise the “price-taker” option only if they expect to achieve greater profit by being a price-taker than by directly participating in the auction. *Id.*

The price-taker option will harm the auction process. *Id.* at 46. The goal of obtaining reliable supply for ratepayers at competitive market prices will not be fulfilled under such a proposal. *Id.* at p. 47. In the extreme, if several bidders opt to be price-takers, vigorous competition will not develop for the few remaining auction tranches. *Id.* at p. 48. A price will

be obtained at the auction, but it is unlikely to be either competitive or to be a market price. *Id.* The price-taking option likely will deter auction participation. *Id.* at p. 49. Bidders may not be willing to invest resources and prepare their bids with the possibility that, at the end of the day, they will be competing for a small auction volume. *Id.*

The price-taking option gives a large bidder the option to reserve a portion of the supply for itself. Smaller or newer BGS Suppliers could perceive the price-taking option as a barrier to entry. *Id.* Knowing that such an option exists may well discourage the participation of these BGS Suppliers. *Id.*

The price-taker option has other purely practical problems. The BGS tranches are not all the same. The price-taker will need to declare the number of tranches of each product that it wants to serve. This leads to unresolved practicalities, for example: if a price-taker wants to serve all of the tranches of particular product (*e.g.*, all one-year tranches for BGS-LFP customers) how will the price for this product be determined? *Id.* at p. 50. If there are several price-takers so that there is just one tranche left in the Fixed Price Segment, how will the prices for each of the four products in that Segment be determined on the basis of the auction price? *Id.*

If adopted, the price-taker option would require the auction process to be reworked. For example, bid decrements must be revised to account for the significantly reduced auction volume. *Id.* at p. 51. Such revisions would not be an easy task as it is more difficult to calibrate the price decrements for products with smaller tranche targets. *Id.*

Dr. Salant's "price-taker" proposal should therefore be rejected.

9. Other Format Concepts and Issues

a. Auction Information Disclosure

The Commission should ensure that the disclosure of auction information does not adversely affect the outcome of the auction from the perspective of ratepayers. Bidders can be

expected to be active in other energy markets, including in trading for products that will be used as inputs to the auction products. *Id.* at p. 60. Disclosing information about their auction participation could impede the bidder's other business dealings by revealing important information regarding their competitive positions. It could directly impair their bargaining position when making supply arrangements for the auction. *Id.* The ultimate effect on the auction outcome would be to raise price – either because making auction information public would have a chilling effect on auction participation or because it could directly raise the cost of supply arrangements that bidders negotiate to participate in the auction. *Id.*

Revealing their participation in the auction, their bids, or the auction price in a given round can negatively affect the bidders' ability to acquire wholesale market inputs or can affect their other market dealings. *Id.* at p. 61. That being said, once the auction has concluded, and once there have been ample opportunities for any bidder that had participated without being fully hedged in the auction to make suitable arrangements to serve load won at the auction, some auction information can be revealed without harm (*e.g.*, winners names, prices, number of tranches won, and some round-by-round information). *Id.* at p. 61. However, in the special case where the auction volume had been cut back, the Auction Manager should have the ability to recommend to Staff that some round-by-round information be withheld to prevent “backward engineering” of the auction volume guidelines. *Id.* at pp. 61-62.

D. Clearing Price: Uniform vs. Pay-as-Bid¹⁶

BGS-FP and BGS-LFP Suppliers will be paid the final price as determined at the auction for each of the products, multiplied by a seasonal factor for the load that the BGS Supplier serves. Resp. Ex. 6.0, p. 56. The final auction price for each product may be different. The

¹⁶ The pay-as-bid pricing structure was not proposed in the Dockets 05-0160, 05-0161, and 05-0162 (cons).

seasonal factor will be larger than 1.0 in the summer to account for higher costs, while it will be lower than 1.0 in the winter to account for lower costs. *Id.*

BGS-LRTP Suppliers will be paid in two parts. The first part will be for energy delivered to the Ameren Companies. This rate will be set at the MISO real-time Ameren Illinois zonal LMP. The second is for the managing of all risks associated with providing capacity and other MISO services, and is set via the auction. *Id.* at p. 57.

The payments made to BGS Suppliers will be based on the final auction clearing price for each product. Generally, the auction clearing price is the price at which supply and demand are equal in the auction.

E. Auction Management

The Ameren Companies' proposal relies upon the participation of several key entities for the final development, operation and management of the auction. These entities include: the Auction Manager, the Commission and Staff, and the Ameren Companies themselves. The specific roles that each of these entities will fill are described below.

1. Auction Manager

The Ameren Companies' propose to engage an independent Auction Manager who will actively manage the auction process and be the sole interface between the bidders and the auction. The Auction Manager will:

- Set up and maintain a web site for the dissemination of auction information including all needed documents, announcements of events and deadlines, as well as all load data to bidders;
- Manage the bidder interface, including serving as a clearinghouse for all bidder inquiries and comments, developing application forms, managing the qualification and registration of bidders, developing and testing bidding procedures, and training bidders;
- Provide technical help to bidders with respect to the Auction Rules and the bidding procedures, including drafting manuals and information packages;

- Review and resolve any issues arising over associations with the Staff;
- Administer the bidding procedures and make round-by-round decisions during the auctions;
- Provide to the Commission a report after the Part 2 Application and a report at the conclusion of the auction;
- Deliver to the Ameren Companies a factual report on the auction that will be made public and serve to improve future auction processes;
- Coordinate between the Commission, Staff, the Auction Advisor, and the Ameren Companies;
- Review the experience in the auction with stakeholders and suggest improvements for future auctions.
- Answer bidder questions and post questions and answers received to a web site;
- Lead bidder training and bidder information sessions; and
- Manage the bidding procedure to receive bids and make calculations during the auction.

Id. at p. 65-66.

a. Discretionary Actions

Although most Auction Manager actions are prescribed by the Auction Rules, some discretionary decisions might have to be made, especially with respect to unforeseen circumstances. Resp. Ex. 10.0, p. 17. It likely is impossible to totally eliminate the Auction Manager's discretion without harming the auction process. *Id.* at p. 19. The Auction Manager must retain some level of discretion to deal with unforeseen events. *Id.* If any discretionary decisions must be made during the auction process, the Auction Manager will make a decision only after consultation with the Staff and its Auction Advisor. *Id.*

The Auction Manager should retain some level of discretion in certain important circumstances. The Commission should, therefore, recognize the Auction Manager's commitment to work with the Staff and its Auction Advisor and approve the Auction Manager's role as proposed.

b. Independence

The Ameren Companies have designed a fair, transparent auction process to ensure the independent implementation of the auction. *Id.* at 18. An independent Auction Manager promotes the fair and equal treatment of all bidders. Resp. Ex. 12.0, p. 101. The Auction Manager is the single point of contact for all bidders, promoting a fair and equal process. *Id.* An independent Auction Manager should manage the auction process and that the conduct of the auction process in consultation with Staff and its Auction Advisor. This is best accomplished if the process is conducted by an independent Auction Manager with substantial involvement and oversight from Staff, with assistance from their Auction Advisor.

As proposed by the Ameren Companies, the crucial auction process steps are administered by the Auction Manager in collaboration with the Staff, with the assistance of their Auction Advisor as needed. *Id.* at p. 102. Although the Ameren Companies participate in the process by providing information and data to the Auction Manager, and making assessments related to credit and the administration of the SFCs, they do not direct or even participate in the major decisions and activities of the auction process. *Id.* In particular, the Auction Manager and the Staff with the assistance of their Auction Advisor, who will collectively monitor the bids during the Auction and administer the bidding process, will have no contact with Ameren Companies during the auction. *Id.*

The independence of the Auction Manager is determined by the fact that the Auction Manager is retained for the sole purpose of working toward the goal of maximizing the probability of the success of the Auction. *Id.* 104. The ability of the Auction Manager to focus on this goal is provided by the clear definition of success that will be established through this proceeding, and by the clear mandate for the Auction Manager to work to achieve this goal. *Id.*

The selection of the Auction Manager by the utility has no bearing on the independence of the Auction Manager. *Id.*

To protect auction independence and eliminate any appearance of impropriety, the Commission should direct that: (1) the Auction Manager should conduct the auction in close consultation with Staff, and that decisions requiring the exercise of the Auction Manager's professional judgment during the auction will be made in consultation with Staff; (2) representatives of the Ameren Companies should not be present "in the room" during the actual conduct of the auction, not be permitted to direct or influence the Auction Manager's conduct of the auction, and not be permitted to communicate with the Auction Manager during the running of the auction; and (3) the Ameren Companies will be entitled to round-by-round data concerning the price and excess aggregate supply for each product and term, provided that this information will only be shared with specific persons at the Ameren Companies who will be identified by name to the Manager of the Energy Division of the Staff in advance. Resp. Ex. 10.0, p. 4.

2. Role of Ameren Companies

The Ameren Companies will engage an independent Auction Manager to manage the auction process from final document preparation and auction promotion to the application process and the actual auction mechanics. *Id.* at 16.

As described above, there will be limited communication between the Auction Manager and the Ameren Companies once the auction begins. *Id.* at 17. The Ameren Companies will receive no more information during the auction than the BGS Suppliers bidding in the auction receive. *Id.* These limited communications will occur only to the extent expressly permitted in the auction rules and other auction documents. Importantly, no representative of Ameren

Companies will be “in the room” while the auction is in process. *Id.* at 18. This physical separation during the auction will further avoid any appearance of impropriety.

Under its proposal, the Ameren Companies will:

- Retain an Auction Manager to administer the auction;
- Support the Auction Manager in promoting the auction opportunity;
- Supply data and other key information to the Auction Manager that BGS Suppliers would use to prepare their bids and that will be made available to bidders through the web site maintained by the Auction Manager;
- Provide follow-up technical support to the Auction Manager in response to specific questions received by bidders with respect to the data and SFC;
- Review and approve financial qualifications in the Part 1 Application ; and
- Execute the SFCs with the BGS Suppliers.

Resp. Ex. 6.0, p. 65-66.

3. Role of Staff

The Staff will play a key role leading up to and administering the proposed auction. Before the auction, the Auction Manager will coordinate with the Staff the finalizing of auction documents and methodologies. Representatives of Staff will be present with the Auction Manager during the actual auction and will directly observe the Auction Manager’s implementation of the auction process. Resp. Ex. 10.0, p. 18. Based on its own observations and their Auction Advisor’s observations, the Staff will issue a report to the Commission. *Id.* The Auction Manager will coordinate with the Staff to the extent any discretionary actions must occur. *Id.* at p. 17.

The Staff will hire an Auction Advisor. *Id.* at p. 17. The Auction Advisor will assist the Staff in observing the Auction Manager’s implementation of the auction process. *Id.* at p. 16-17. The Auction Advisor also will be present during the actual auction process and will advise Staff prior to and during the course of the auction. *Id.* Primary responsibility for the monitoring,

reporting, and other activities falls to the Staff in consultation with any expert(s) the Staff believes would be appropriate. Resp. Ex. 11.0 (revised), pp. 53-54.

The Commission and Staff will:

- Keep apprised of the result of the qualification procedure, and review an interim report provided by the Auction Manager summarizing the interest in the auction; and
- Conduct a prompt review during the post-auction consideration period to determine whether to provide a written notification to Ameren concerning the auction, which would trigger certain contingency provisions under the tariff.

Resp. Ex. 6.0, p. 65.

The Ameren Companies propose that the Staff and the Auction Manager each will independently submit auction reports to the Commission. Resp. Ex. 11.0 (revised), p. 54. Both the Staff and Auction Manager independent reports will be submitted to the Commission by the end of the business day following the end of the auction. *Id.* at p. 54. The Staff report will assess whether or not the Ameren Companies' auctions were conducted fairly and appropriately and all necessary actions to ensure the competitiveness and integrity of the auctions were followed. *Id.* at pp. 55-56. The Staff report also should discuss any issues or concerns identified by the Staff and any recommendations the Staff has regarding further action by the Commission. *Id.* The Ameren Companies anticipate that the report would address four general areas: (a) pre-auction activities; (b) the conduct of the auction; (c) external events that may have affected the auction results; and (d) any issues, concerns or recommendations identified by the Staff. *Id.* at p. 56.

The process in which the Staff and the Auction Manager each produce independent auction reports will provide sufficiently independent assessments and permit the Commission to reach a conclusion on the auction within the deadline. *Id.* at 57-58. The process will result in two independent auction assessments being provided to the Commission within one business day

of the auction's close. *Id.* These reports will allow the Commission to reach a conclusion before the deadline with the assurance that its decision will be based on two independent assessments.

Id.

4. Representation of Consumer Interests / Separate Consumer Observer

The Citizen Utility Board ("CUB") proposes that the Commission provide for a "Consumer Observer" to observe and report on the auction from the consumer perspective. CUB Ex. 2.0, p. 20. CUB proposes that the Consumer Observer have special access to the auction process and would report its conclusions to the Commission. *Id.* As proposed, the Consumer Observer would monitor seemingly every aspect of the Auction Manager's duties. Resp. Ex. 10.0, p. 20. CUB proposes to give the Consumer Observer the ability to recommend rejection of the auction if it observes "unreasonable price bids." CUB Ex. 2.0, p. 24. Under CUB's proposal, the Consumer Observer would be under the authority of "official" consumer advocates like the CUB or the Attorney General. *Id.* at p. 25.

Such a consumer observer is neither necessary nor desirable and should be rejected. The additional oversight is not warranted given that the auction process designed by the Ameren Companies provides transparency for every market constituent. Resp. Ex. 10.0, p. 20. The Ameren Companies' filing specifically addresses: (1) how power will be procured; (2) how bundled retail rates will be structured; and (3) how prudently-incurred, market-based procurement costs will be recovered. *Id.* Significant material will be provided to the consuming public at every turn of the process. *Id.* Although some information must be kept confidential from the public to protect the auction process and to protect bidders' confidentiality, most information will be made public. *Id.* at p. 21.

Ensuring the confidentiality of certain bidder information and bid data is critical to attracting bidders to the auction. *Id.* Bidders could be subject to competitive harm if

confidential information was released (even if unintentionally released) either at all or before the proper time. *Id.* at pp. 21-22. The risk of such commercial harm must be avoided if the auction is to attract a wide collection of bidders. *Id.* at 22. CUB's suggestion that confidentiality is a "non-issue" because the Consumer Observer would execute a confidentiality agreement is shortsighted and unreasonable. *Id.* Increasing the number of people with access to the confidential information will increase the likelihood of a leak (intentional or otherwise). *Id.* As described above, such a leak could harm a competitor or wreck the entire auction. *Id.*

F. Date of Initial Auction

It is the Ameren Companies objective to hold the auction at a time that will attract the maximum number of potential bidders and, therefore, the lowest price for their customers. *Id.* at 14. The Ameren Companies propose that the first joint auction with ComEd be held sometime within the first ten (10) calendar days of September 2006. *Id.* The benefit of holding a single statewide auction on the same date outweighs the benefits/detriments of either a May, July or September auction date. *Id.* With the Ameren Companies and ComEd holding a joint auction, the selection of the single date is even more important. *Id.* at p. 15. An early September auction date is the most reasonable balancing of interests. *Id.* at 22.

Several potential BGS Suppliers have supported a September auction date. (Nelson Tr., p. 189-190). These suppliers wanted a September (versus May) auction because a September auction would be closer to the delivery date. *Id.* The longer the delay between the auction date and the delivery date, the more time premium (or risk) is for suppliers. *Id.* Holding an auction in September will reduce the time premium that the suppliers would have to account for in their auction prices. *Id.*

The Commission should approve the proposal to hold the first joint auction in the first ten days of September. The proposed September auction achieves a reasonable balance of interests and avoids the time premium risks that potential BGS Suppliers have identified.

G. Common Versus Parallel Auctions

1. Among Fixed-Price Products and Hourly Products

The Ameren Companies have agreed to an auction process that permits switching between the fixed-price products of ComEd and the fixed-price products of the Ameren Companies, and also permits switching between the hourly-price products of ComEd and the hourly-price products of the Ameren Companies, but does not permit switching between fixed-price products and hourly-price products. Resp. Ex. 12.0, p. 67. Switching makes sense when the products in the auction are good economic substitutes for one another in the bidders' business plans. *Id.* at 66. In these cases, switching between products increases competition and allows prices to reflect the market more accurately. *Id.*

The products in the Ameren Companies' auction are clearly related. Resp. Ex. 6.0, p. 19. Some of the wholesale power products that bidders will assemble to provide the full-requirements service are the same across all items. *Id.* Some bidders will view one item at the auction as a substitute for another, meaning that they are willing to bid on one item or the other, depending on the difference in the prices. *Id.* Other bidders, given their business plans, may view one item as complementary to one or several others. *Id.*

Switching between products is, on balance, beneficial. Resp. Ex. 12.0, p. 69. There are certain strategies that could be employed today by bidders such that the components of ComEd's fixed-price CPP products could be substitutable for components of the fixed-price BGS products, with the same holding true for the hourly products. *Id.* These benefits can only be expected to increase with time as the PJM and MISO RTOs implement their joint and common market. *Id.*

at p. 70. As the PJM and MISO markets become more aligned, the CPP and BGS products will become closer economic substitutes than they are today. *Id.*

If a price gap opens up between auction products, and this gap is not supported by the differences in cost or risk, the auction format naturally works to close the price gap to a market-sustainable level by permitting bidders to switch to the ‘over-priced’ product. Resp. Ex. 6.0, p. 20. For example, if a bidder perceives one product to be over-priced relative to another product, the bidder might switch tranches to the so-called over-priced product. The supply of the higher-priced product will rise and the supply of the other products will fall. The price of the ‘over-priced’ product will tick down in the next round while the price of the lower-priced products will hold steady or will tick down by a relatively smaller amount. *Id.* The final prices will reflect market realities. *Id.*

2. Between Fixed-Price and Hourly Products

The BGS-FP and BGS-LFP products are not good substitutes for the BGS-LRTP product because the products would not hold the same place in the bidder’s business plan. Resp. Ex. 12.0, p. 67-68. The bidder’s success with fixed-price products critically depends on its ability to predict future energy prices and the hourly load obligations. *Id.* at 68. The BGS-LRTP product, on the other hand, is not a fixed-price energy product. A BGS-LRTP bidder’s success does not depend as much on future energy prices or the ability to forecast. BGS-FP and BGS-LFP Suppliers take radically different risks from BGS-LRTP Suppliers and the characteristics of the revenue streams for the BGS-FP and BGS-LFP products are different from those of the BGS-LRTP product. *Id.*

Switching between the fundamentally different fixed-price and hourly-price products, whether between such products in the Ameren Companies auction or between the ComEd and

Ameren Companies auctions is both unwise and risky, at least until further experience is gained with auction processes in Illinois. Resp. Ex. 10.0, p. 3.

3. Between Ameren Companies and ComEd Products

The Ameren Companies and ComEd have agreed that on balance that it would be acceptable if the Illinois auction process permits BGS Suppliers to switch their bids during the auction between fixed-price products being purchased by the Ameren Companies and the fixed-price products being purchased by ComEd. *Id.* at pp. 2-3. Similarly, it would be acceptable if the Illinois auction process permits BGS Suppliers to switch bids between the hourly-priced products being purchased by the Ameren Companies and those being purchased by ComEd. *Id.*

4. Common Deliverability Test

IIEC witness Mr. Dauphinas recommends that any approval of the auction process should be conditioned upon the Ameren Companies working with ComEd, MISO, and PJM “to remove ... impediments to a single common power procurement market for the Ameren Operating Companies and ComEd in Illinois.” IIEC Ex. 2, p. 3. Along the same line, Mr. Dauphinas also recommends that the Ameren Companies be required to work with those same entities “to implement ... a single common deliverability test for resources within the combined MISO and PJM footprint to serve network load within the Ameren Operating Companies and ComEd within Illinois that will permit a joint auction by a date certain.” *Id.* Under, Mr. Dauphinas’ proposal, the Ameren Companies would be required present status reports to the Commission every three months until a common deliverability test is implemented. IIEC Ex. 2, p. 3.

As an initial matter, the Ameren Companies are not opposed to cooperating with ComEd, MISO, and PJM in a joint effort to implement a “common deliverability test.” The Commission must recognize, however, that the Ameren Companies and ComEd control neither the existence

nor results of a such joint effort. Whether MISO and PJM ultimately develop a common deliverability test will depend upon the participation of many other market participants -- most of whom are not subject to the Commissions jurisdiction -- and the willingness of FERC to adopt the approach, if any, adopted by MISO and PJM.

The existence of a “common deliverability test” should not delay approval or implementation of the auction. As described herein, the Ameren Companies’ proposed auction process is properly designed for the wholesale markets as they exist. Any future improvements to the wholesale markets (through a common deliverability test or otherwise) can only improve the effectiveness of the proposed auction process.

H. Blended, Fixed Price Auction Products

1. Proposed Blends For Residential and Small Commercial Customer Supply

a. 3-Year Agreements

Residential and Small Business (“R&SB”) customers with demands under 1 MW will receive a fixed-price service. Ameren Companies initially will seek to procure supply for its R&SB customers in a mix of one-year, two-year, and three-year supply periods so as to step into a three-year rolling procurement structure. Resp. Ex. 3.0, pp. 5-7. In the first auction only, the Ameren Companies will procure supply for 17, 29, and 41-month terms beginning January 1, 2007, for this category of customers. *Id.* This will allow for the alignment of future auctions with the MISO planning schedule. Resp. Ex. 6.0, p. 129-139. As much as practicable, an equal number of tranches will be procured for each supply period. Resp. Ex. 6.0, p. 55.

The term structures proposed by ComEd for their R&SB customers are different from the term structure proposed by the Ameren Companies.¹⁷ The term structures for the Ameren Companies and ComEd need not be harmonized in order to ensure auction success. *Id.* at p. 83. Bidders have a variety of different products from which they can choose and should be able to appropriately price the different terms. The auction mechanics can accommodate many products and do not require that a particular number of products or a particular term structure be used. *Id.* This holds true whether there is a single auction that includes the Ameren Companies and ComEd products or whether there are separate auctions for the two companies. *Id.*

b. Percentage of Supply Acquired at Subsequent Auctions

As described above, the first auction will include tranche terms of 17, 29, and 41-months. Tranches representing about one-third of the BGS-FP load will expire each year. Resp. Ex. 3.0, p. 5-7. The expiring contracts will be replaced with 3-year (or 36-month) contracts through the annual auction process. Resp. Ex. 6.0, p. 82. Hence, each year, the Ameren Companies will procure contracts covering about one-third of their BGS-FP load for a three-year supply period. *Id.*

Procuring overlapping three-year contracts in which one-third of the R&SB load is procured every year provides market-based yet reasonably stable pricing for this group of small customers. *Id.* While there may be variations in the market from year-to-year, overlapping three-year contracts will serve to stabilize or smooth out price fluctuation. Resp. Ex. 3.0, p. 6.

¹⁷ ComEd proposes that the supply for its under 1 MW customers be procured through a blend of five-, three- and one-year terms. Resp. Ex. 6.0, p. 83. Every year, 15 % of the load would be procured on a one-year basis, 20 % would be procured on a three-year basis, and 5 % would be procured for a five-year term. Under its proposal ComEd would procure supply by a blend of 17-month, 29-month, 41-month, 53-month, and 65-month terms in its initial auction. *Id.*

2. Proposed 1-Year Fixed Price Product for 400 kW - 1 MW Customers

The Ameren Companies' primary product design objective was to create a set of products to procure BGS Supply for the Ameren Companies' customers that: (a) provides a default service option for customers not participating in retail choice; and (b) maximizes the efficiency of the proposed auction process. Resp. Ex. 18.0, p. 15. When developing their product design, the Ameren Companies considered the tradeoffs between, on the one hand, creating a large number of customer groups (and auction products) based on differing load characteristics and switching risks and, on the other hand, having fewer customer groups and relying on the rate translation prism to handle differences, such as differences in load characteristics. Resp. Ex. 11.0 (revised), pp. 21-22.

In designing its auction products, the Ameren Companies looked at a number of factors and chose to take a conservative approach. Resp. Ex. 11.0 (revised), p. 25. The factors considered by the Ameren Companies were: (a) switching risk; (b) customer metering; (c) that additional products are already included in the first auction to step into the three-year ladder for the R&SB customers; (d) the fact that the auction products can be easily adjusted in later auctions; and (e) lessons learned from past auctions in New Jersey. *Id.*

CES witness Dr. O'Connor recommends in his testimony that the R&SB customers' BGS service with loads between 400 kW and 1 MW be separated from the balance of the R&SB customers. CES Ex. 1.0, pp. 13-14. He further recommends that the Ameren Companies procure one-year fixed-priced contracts for these customers, and that this would become the default option for these customers. *Id.* at p. 15.

The Ameren Companies do not intend or expect to replicate their rate current books through the auction or split the customers into small groups based on customer characteristics. Resp. Ex. 11.0 (revised), p. 22. That would be neither practical nor wise. *Id.* Instead the

Ameren Companies' product design focuses on providing consumers with a simple, viable default service option at the lowest cost. Resp. Ex. 18.0, p. 16. The simple default service option permits the retail marketplace to develop the products demanded by consumers without the influence of arbitrary, artificial product designs. *Id.* ARES are in a better position to determine and respond to consumers' changing needs and desires with respect to specific products and services than the Ameren Companies ever can be under the default service obligation. *Id.*

Far from sacrificing the customer interests, the Ameren Companies' product design places the responsibility for developing fine-tuned retail products in the hands of the competitive retail marketplace where it belongs. *Id.* If specific product designs are demanded by consumers then the retail marketplace will respond – that is the very nature of a competitive market. *Id.*

The Ameren Companies should not buy specific products in the wholesale market in order to create customized retail product offerings for individual retail customers. Resp. Ex. 11.0 (revised), p. 22. Designing a plethora of fine-tuned auction products to meet desires specific to certain customers or customer groups might indeed inhibit the development of the competitive market. Resp. Ex. 18.0, p. 18. If the Ameren Companies provide these fine-tuned services, ARES may choose to not enter this segment of the marketplace. *Id.* On the other hand, if customers desire alternatives to the simple default services provided by the Ameren Companies, ARES likely will come to the marketplace to fill these needs. *Id.* The default service should not be misused as a tool to meet individualized customer needs. *Id.*

Dr. O'Connor's proposal also raises very practical concerns. Hourly historical load profiles are important to bidders so they can understand the auction products. The level of detail in the historical load data for the 400 kW to 1 MW customers may not be sufficient for potential

suppliers to fully understand and quantify the risks associated with some of the products for the smaller group. Resp. Ex. 15.0, p. 18-21. As a result, bifurcating the R&SB group as Dr. O'Connor suggests may unduly affect the price that comes out of the auction. *Id.* In addition, the Ameren Companies do not have load profile metering in place for over 90 % of these customers. If Dr. O'Connor's proposal is adopted, many new metering installations will be required and new costs will be placed on these customers. *Id.*

Including these customers in the BGS-LFP product, as proposed by CES, may well result in higher prices for these customers for other reasons as well. Resp. Ex. 18.0, p. 26. Bidders on the BGS-LFP product likely will include a risk premium to account for the open enrollment period. If the rate prism is unable to specifically identify and specifically allocate this risk premium to BGS-LFP, the customers in the 400 kW to 1 MW group "could end up with higher prices as a result of moving this customer load into the BGS-LFP product." *Id.*

After reviewing this issue, Staff witness Dr. Zuraski recommend that CES's proposal to segregate the 400 kW to 1 MW customers "be placed in abeyance pending review of one or more rounds of auction results and subsequent switching activity by customers within the BGS-FP segment." ICC Staff Ex. 12.0, p. 25.

The product design can be easily adjusted in later auctions if the Commission determines that customized auction products are necessary. Resp. Ex. 11.0 (revised), p. 599-614. The product design can be easily changed at any time if it needs refinement in the future to, for example, increase the auction efficiency or to support the further development of retail competition. Resp. Ex. 11.0 (revised), p. 27. Because it is this easy to adjust the product design from one auction to the next, it is reasonable to take a conservative approach for the first auction in which 100 % of the load is up for auction.

CES' proposal to segregated the 400 kW to 1 MW customers should be rejected.

3. Proposed Monthly and Quarterly Products

DES witness Mr. Steffes recommends a fundamental change to the Ameren Companies' auction product proposal. DES/USEC Ex. 1.0, pp. 8-9. He proposes that: (a) customers over 1 MW should have a default rate that is hourly; (b) customers that have under 1 MW annual peak and usage greater than 15,000 kWh should receive a default price that results from a monthly auction; and (c) customers that use 15,000 kWh or less should receive a default price that results from a quarterly auction. *Id.*

When developing its product design and deciding on the terms of the various products, the Ameren Companies considered, among other things, the consensus opinions of the Commission's Post 2006 Initiative Procurement Working Group ("PWG"), the positions of specific stakeholders that participated in the PWG, the current development of the retail markets in the Ameren Companies' service territories and the Ameren Companies' expectations of how competition might develop in the future. Resp. Ex. 11.0 (revised), p. 31. Included in the final report of the PWG is a list of 18 consensus attributes that the stakeholders participating in the PWG agreed that any approved procurement process should include. *Id.* at pp. 31-32. Included as item # 7 in that list is the following: "It should facilitate stable rates and mitigate volatility for applicable customers for relevant time periods." *Id.* at p. 31. Rate stability and mitigation of market volatility is an important feature. *Id.* at p. 32.

Mr. Steffes proposed product design is not consistent with these PWG concepts and cannot be procured efficiently using auctions. *Id.* at p. 32-35. Under Mr. Steffes proposal, the Ameren Companies would be required to run an auction each and every month in order to procure fixed-price service for its R&SB customers with annual usage greater than 15,000 kWh. *Id.* at p. 34-35. The Ameren Companies would also be required to hold auctions on a quarterly

basis for their R&SB customers with annual usage less than 15,000 kWh. *Id.* Holding monthly auctions would be extremely expensive and inefficient. It simply is not practical. *Id.* at p. 35. In contrast to the Ameren Companies' proposal, the expenses of setting up, running, and participating in a monthly auction will be spread over the small amount of energy procured by a monthly auction. *Id.* It is very possible that BGS Suppliers will not be willing to make such an investment if winning earns them only a one-month contract. *Id.* at p. 35-36. This could result in a less competitive auction and higher auction prices.

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

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

As previously described, larger customers (those with loads exceeding 1 MW) will be served through BGS-LFP tranches and BGS-LRTP tranches. BGS-LFP tranches represent fixed-price full-requirements service. BGS-LRTP tranches represent full-requirements service with a real-time (hourly) priced full-requirements service. In the first auction, these tranches will be from January 1, 2007 to May 31, 2008. Resp. Ex. 6.0, p. 54. Once the auction terms are harmonized with the MISO planning year, the BGS-LFP and for BGS-LRTP supply period for subsequent auctions will be 12 months, from June 1 to May 31. *Id.* at pp. 54-55.

2. Prequalification of BGS-LFP Load

IIEC witness Mr. Stephens suggests that the largest consumers, *i.e.*, 3 MW or larger, be required to prequalify their loads prior to the auction in order to be eligible to elect BGS-LFP service. IIEC Ex. 1, p. 3. He states that this will "mitigate load risk" and provide greater load certainty to suppliers. *Id.* Under his proposal, if a consumer wants their load put into the auction, it must notify the Ameren Companies in advance of the auction date. This prequalification is not a commitment to take the ultimate fixed price offer. *Id.* at p. 12-13.

Customers' ability to choose between alternatives should not be limited by administrative hurdles and burdens. Any prequalification process necessarily implies deadlines and obligations. Failure to meet the obligations and deadlines will result in lost opportunities. In this case, under IIEC's prequalification proposal, if a customer fails to register its load with the Ameren Companies, that customer will lose the opportunity to compare the final BGS auction prices against other supply sources.

IIEC's prequalification proposal should be rejected.

3. Demand Charge Component for ≥ 1 MW Customers

In the context of the Stipulation and Agreement reached between the Ameren Companies and IIEC, the parties agreed that "if the Commission adopts the IIEC's 'better alternative,' IIEC shall not seek rehearing of, or otherwise challenge, the Commission's failure to adopt or approve any other demand response program in the Consolidated Dockets." Ameren/IIEC Joint Ex. 1 at p. 3.

As part of that agreement, the Ameren Companies stated their willingness to adopt the IIEC's "better alternative" recommendation. The Ameren Companies recommend that the Commission endorse the Stipulation and Agreement in full. *See* Section VII.10 "Alternative proposals re interruptible service" for a full discussion.

Considering the above, the Ameren Companies do not comment herein regarding the IIEC's other demand response program recommendations – namely, MISO programs for Demand Response Resources and Interruptible Load. In the event the Commission does not support the Stipulation and Agreement, or rejects the Ameren Companies' provision of this interruptible service, the Ameren Companies then rely upon the argument set forth in the Ameren Companies' prefiled testimony, as reasons and justification for opposing the IIEC's other demand response program recommendations.

4. Other

J. Contingencies

Contingency plans define the process that the Ameren Companies will use to procure replacement supply in the unlikely event that additional supply sources are required beyond what is procured in the Ameren Companies' BGS auctions. Resp. Ex. 3.0, p. 18. Contingency plans for three scenarios have been developed: (1) the Ameren Companies receive an insufficient number of bids to provide for a fully subscribed auction volume for one or more of the products being procured in a BGS auction - *i.e.*, volume reduction; (2) BGS Supplier default prior to or during the delivery period of a BGS Supplier contract ; and (3) the Commission rejects the results of a BGS auction. *Id.* at pp. 18-19.

1. Volume Reduction

In the event that the auction volume fails to procure 100% of a BGS auction product, the Ameren Companies will purchase the necessary services for the unfilled BGS tranches through the MISO-administered spot markets until the next scheduled BGS auction. *Id.* at p. 18. The remaining term of the unfilled tranches of BGS supply would be included in the next scheduled BGS auction. *Id.* To the extent that the MISO has not yet implemented a market for capacity, the Ameren Companies will procure the required capacity through the bilateral capacity markets. *Id.*

This contingency plan does not permit the Ameren Companies to purchase the necessary services from the bilateral wholesale market. This arrangement alerts bidders that in order to secure BGS supply prices from the Ameren Companies, it will be necessary to actively participate in the auction. *Id.* at p. 19-20. Bidders would have less incentive to participate in the auction and present their best offers if the contingency plan relied upon a secondary market in which the Ameren Companies would seek to acquire fixed-priced supplies. *Id.*

2. Supplier Default

In the unlikely case in which an SFC is terminated due to a BGS Supplier default after bids have been awarded, the Ameren Companies will abide by the following contingency plan:

- Immediately upon SFC termination, the Ameren Companies will temporarily replace the supply through purchases from the MISO-administered spot markets. To the extent that the MISO has not yet implemented a market for capacity, the Ameren Companies will procure the required capacity through the bilateral capacity markets.
- If the default occurs less than 90 days before the end of the SFC's last delivery day, the Ameren Companies will continue purchases from MISO-administered spot market for the remaining contract term.
- If the default occurs 90 or more days before the end of the SFC's last delivery day, the Ameren Companies will issue a RFP to replace the BGS tranches through a power purchase agreement ("PPA") with deliveries scheduled to begin 20 days after termination of the defaulted-on contract. Other than term and price, all other contract terms will remain the same.

Id. at p. 20.

Any incremental costs or savings associated with prudently-procured replacement power purchases would be collected from the defaulted BGS Supplier. *Id.* at p. 21. To the extent that some portion of the incremental cost is unable to be collected from the defaulted BGS Supplier, this cost would be trued up through a market value adjustment factor. *Id.*

This contingency plan: (a) maintains a continuous supply of the full requirements product required to serve the load; and (b) allows the Ameren Companies to quickly identify the full replacement cost of the defaulted supply contract. *Id.* Identifying the replacement cost quickly will enable the Ameren Companies to settle with the defaulting BGS Supplier as soon as reasonably as possible. *Id.*

3. ICC Rejection

The Ameren Companies have proposed a distinct contingency plan that would apply if the Commission reject the auction results. If the auction results are rejected, under this plan, the

Ameren Companies will meet with the Staff, the Auction Manager, and Auction Advisor within five days and review the reasons why the Commission rejected the results. *Id.* If the auction results were rejected for reasons that could easily be corrected then the appropriate corrections would be made and the Auction Manager would re-run the auction. *Id.* If the auction results were rejected for reasons that are not easily corrected, the Ameren Companies would work with the Staff to develop an alternative procurement plan to be used to procure the required BGS supply until the next scheduled BGS auction. *Id.* at p. 21-22. The Ameren Companies would file the plan with the Commission for approval. *Id.* The unfilled tranches of BGS supply would be included in the next scheduled BGS auction. *Id.*

This is an appropriate contingency plan in the case where the Commission rejects the BGS auction results because it allows the Ameren Companies and the Staff the appropriate level of flexibility to evaluate the reason for the Commission rejection and take the appropriate action. *Id.* at p. 22. The reasons for complete Commission rejection of a BGS auction can vary widely and attempting today to determine a precise alternative procurement plan that is appropriate for all possible scenarios simply does not make sense. *Id.* This contingency plan permits these parties to efficiently resolve any auction issues identified by the Commission, whether fleeting or more structural.

4. Subsequent Prudence Reviews of Actions in Response to Contingencies

Staff witness Dr. Schlaf recommends that the Ameren Companies' purchase of electricity outside the proposed auction process be subject to a prudence review. Under his proposal, the Ameren Companies are to file a report with the Commission explaining the reasons for purchasing outside the auction. ICC Staff Ex. 5.0, p. 14-18. Upon receipt of the report, the Commission could open an investigation to determine whether the Ameren Companies' actions

contributed to the need for the additional electricity. *Id.* Dr. Schlaf proposed specific language to implement this review. ICC Staff Ex. 13.0, p. 9. The Ameren Companies have agreed to use this language in Rider MV subject to the following revisions (the underlined text is added to Dr. Schlaf's proposed language):

In the event that the Company purchases full requirements electric supply outside of an executed SFC for the BGS-FP Auction, the BGS-LFP, or BGS-RTP Auction pursuant to the Limitations and Contingencies part of this rider, the Company will provide to Staff a report on the circumstances of such purchases that shall include a description of the events causing the need for those purchases. A copy of the report will be provided to the Director of the Energy Division. If such report contains confidential information of any retail customer, the BGS Supplier, or the Company, the Company may designate the applicable portions of such report as confidential. Notwithstanding any other provision of this tariff, the Commission may, upon its own motion or upon complaint, in accordance with its jurisdiction and authority under applicable law, investigate in formal proceedings the prudence and reasonableness of any action or inaction by the Company that contributed to the need for, or the amount charged to customers for, such purchases. If the Commission in such proceeding finds that any action or inaction by the Company contributing to the need for, or the amount charged to customers for, such purchases was imprudent or unreasonable, then the Commission may order appropriate relief, including refunds of incremental amounts, if any, collected by the Company on revenue that would not have been collected but for such imprudent and unreasonable action or inaction and are not otherwise owed to the Company. Notwithstanding the foregoing, nothing herein is intended to impede, limit or affect the Company's rights under applicable law to challenge any such order, decision or ruling by the Commission.

Resp. Ex. 18.0, p. 32.

K. Regulatory Oversight and Review

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

The Commission will maintain oversight within the proposed procurement and retail rate proposals. Resp. Ex. 2.0, p. 24. Under the Ameren Companies' proposal, the Commission will: (1) approve the procurement methodology and process before the auction takes place; (2) closely monitor compliance with the approved procurement process with assistance of an independent Auction Advisor; (3) be able to initiate an investigation of the auction outcomes if the

procurement was not conducted in compliance with the process; (4) approve the BGS rate structure and the rate allocation methodology used to translate the procurement costs into retail rates; (5) approve the market value adjustment factor; (6) approve the contingency plans that describe the process the Ameren Companies will use to purchase any BGS supply not obtained through the auction process; and (7) approve any proposed prospective changes to the procurement process. *Id.* The Commission also retains full regulatory oversight regarding DS rates and the DS component of bundled service rates. *Id.* at pp. 24-25. The Commission also will fully retain its ability to implement potential future energy policy options, such as renewable resource standards or energy efficiency and low income programs. *Id.* at p. 25.

The Ameren Companies do not propose to establish rates that are unjust or unreasonable under traditional regulatory standards. Resp. Ex. 10.0, p. 24. The Ameren Companies' retail rates will remain subject to traditional regulatory standards of justness and reasonableness, which entails a prudence review of the Ameren Companies' decisions. Under those standards, the Ameren Companies would be expected to make decisions that, without the benefit of hindsight, would be expected to lead to the lowest overall cost of service. *Id.* No additional prudence review (*i.e.*, no hindsight review) is required where the Commission has approved the prudence of the auction process and the auction process has been followed. *Id.*

Under the traditional regulatory standards employed by the Commission, prudence is a forward-looking test. The Commission determines whether discretionary actions taken by the utility are reasonable in light of the facts and circumstances known at the time that the action was taken. The auction process removes virtually all discretion from the utility in the procurement process. *Id.* at p. 25. As long as the rules have been followed, there is no discretionary action by the utility to review after the auction process has been completed and contracts executed. *Id.*

There is no other action the utility could have taken under the auction rules approved by the Commission, and thus no action whose prudence requires evaluation. *Id.* Moreover, by the time contracts are executed, the Commission will have reviewed whether the auction rules were followed, and thus, whether the auction results should be accepted. *Id.*

If the Auction Manager has materially deviated from the auction rules, the Staff will report this to the Commission and, presumably, the Commission could reject the auction. *Id.* A prudence review should not be an after-the-fact referendum on whether other parties like the price that resulted from the auction. *Id.* A prudence review is intended only to determine whether a utility exercised its discretion reasonably.

2. Post-Auction Commission Review of Results

The proposed Rider MV provides for prompt post-auction consideration of the auction results by the Commission. Resp. Ex. 2.0, p. 25. If the Commission concludes that grounds exist to initiate an investigation or complaint concerning the auction outcome, it would notify the Ameren Companies, triggering the pre-specified contingency provisions. *Id.* In deciding whether to issue a notice of investigation or complaint, the Commission, in consultation with its Staff and the Auction Advisor, would consider if the competitive procurement has been conducted in accordance with the approved procurement process and whether there was unambiguous evidence that the auction outcome has been manipulated. *Id.* If no such action is taken by the Commission within three days following notice of the end of the auction from the Auction Manager, the auction-determined procurement costs should be deemed prudent for the purpose of full cost recovery in retail rates. *Id.* at pp. 25-26. At that point, the Ameren Companies would proceed with the acquisition of supply from the pre-qualified successful bidders. *Id.*

Bidders will not accept an open-ended auction review process. *Id.* If bidders know that the auction is subject to a lengthy post-auction review, they would either be less likely to bid, or would increase their asking price if they did bid, to reflect the greater risk to them. *Id.*

3. Post-Auction Workshop Process

The Ameren Companies are committed to a continuous improvement process. To this end, their proposal includes a post-auction review process structured to provide an open forum for the continued improvement of the competitive procurement rules and methods. Resp. Ex. 12.0, p. 8. As part of this process, the Auction Manager will deliver to Ameren a factual report on the auction that will be made public and serve to improve future auction processes and review the experience in the auction with stakeholders and suggest improvements for future auctions. Resp. Ex. 6.0, p. 66.

4. Formal Proceeding(s) to Consider Process

In the context of the Stipulation and Agreement reached between the Ameren Companies and IIEC, the parties agreed that the Commission should formally review the auction process on a periodic basis -- annually at first then shifting to biennial reviews. Ameren/IIEC Joint Ex. 1, p. 3. *See* Section VII. 9 “Rider MV - Subsequent Review / Contingencies” for a full discussion.

5. Other Processes and Proceedings

As described above, the Commission will remain actively involved in the auction proceedings from year-to-year. The Commission retains broad authority and powers granted to it by the Public Utilities Act to initiate investigations or proceedings. Regulatory oversight by the Commission will continue before, during and after the auction.

L. Supplier Forward Contracts

The Ameren Companies filed three SFCs in this proceeding: (1) the BGS-FP SFC; (2) the BGS-LFP SFC; and (3) the BGS-LRTP SFC. Resp. Ex. 3.0, p. 12. These standard contracts define in detail the terms pursuant to which each auction product will be procured by the Ameren Companies in the first BGS auction. *Id.* Those registered bidders who win tranches of a BGS product will be required to sign the relevant contract or contracts following the close of the auction. *Id.* at p. 12-13.

The contracts are referred to as standard contracts because each BGS Supplier who wins load for a specific product will be required to sign virtually the same BGS Supplier contract. *Id.* at p. 13. There will be no individual negotiations. *Id.* Only the BGS Supplier name and number of tranches will differ from contract to contract. *Id.* The use of standard contracts is essential to the auction process because it adds transparency to the auction process and increases the auction participation. *Id.* This approach results in a transparent bid evaluation process that makes the auction more attractive to a wide range of potential BGS Suppliers. *Id.*

By basing the SFCs on the BGS Supplier Master Agreements used in the New Jersey BGS auction, the Ameren Companies build on the successful experiences of the New Jersey auctions. *Id.* at p. 13-14. The Ameren Companies developed these SFCs with input from potential BGS Suppliers. *Id.* at p. 18. Face-to-face meetings were held. *Id.* Early copies of the contract were distributed. *Id.*

The Ameren Companies remain willing to work with potential bidders to resolve SFC concerns before the contracts are finalized. To this end, the auction timeline includes a process for reviewing and finalizing the contracts. Resp. Ex. 18.0, p. 14-15. In sum, the process is as follows:

- Within ten days after the Commission approves the auction, the Ameren Companies and ComEd will submit a compliance filing revising the SFCs as required by the Commission's order.
- Staff will review the SFCs to ensure compliance with the Commission's order, post compliant SFCs, and seek bidder comments.
- The Auction Manager, the Staff, the Ameren Companies and ComEd will review any bidder comments submitted to the Auction Manager. These parties would consult and would collectively consider the comments submitted and respond to prospective bidders.
- Comments would be incorporated into the SFCs if the comments improved or clarified the document without jeopardizing compliance with the Commission's order.

Id.

Additional contract workshops will not be helpful. Instead, such workshops will be a drain on the resources of the Staff, the Ameren Companies, the Auction Manager, and potential bidders.

1. Uniformity in General

Where appropriate, the Ameren and ComEd SFCs should be nearly identical.

Throughout the regulatory process the Ameren Companies have incorporated a number of modifications to the SFCs to more closely align them with the ComEd SFCs. As a result of these efforts, the Ameren Companies have adopted several organizational and substantive modifications.

- *Force Majeure*. The Ameren Companies accepted ComEd's language, with the exception that the Ameren Companies continue to exclude the unavailability of energy in the spot energy markets from the circumstances providing *Force Majeure* relief to BGS Suppliers.
- Termination of one of multiple contracts with a BGS Supplier. The Ameren Companies now provide that the termination of any one of multiple SFCs between a BGS Supplier and the Ameren Companies for BGS Supply results in the automatic termination of all such contracts between that BGS Supplier and the Ameren Companies.
- Compliance with Governmental Directives. The Ameren Companies now acknowledge that both the Ameren Companies and the BGS Supplier may be required to act in response to governmental or civil authority directives which may affect customer load.

- Assignment. The Ameren Companies have eliminated their ability to reject an assignment if regulatory approval is pending after 90 days.
- Mutuality. The Ameren Companies have provided that certain provisions concerning setoff and netting which previously benefited only the Ameren Companies will now apply to the BGS Supplier as well.

Id.

However, there are notable differences in the operations of the Ameren Companies relative to ComEd, including differences in the operations and regulations of the RTOs in which they operate (*i.e.*, the MISO instead of the PJM interconnection). These differences necessitate slightly different SFCs between the companies.

2. Credit Requirements

The Ameren Companies expect to provide reliable power supplies at reasonable rates tied to market levels. These goals will be jeopardized if any entity is unable to meet its obligations. Resp. Ex. 8, p. 8. The best way to avoid this turmoil and uncertainty is to: (a) have appropriate BGS Suppliers pre-qualification standards; and (b) holding the Ameren Companies to financial quality requirements. *Id.*

The Ameren Companies have taken a number of steps to secure credit protections in the event a BGS Supplier fails to perform according to its obligations under the auction rules or under the Ameren Companies' agreements. Resp. Ex. 14.0, p. 4. BGS Supplier qualifications are based, in part, upon the BGS Suppliers creditworthiness or through the provision of a security deposit. *Id.* Additional credit assurances apply once the SFC is executed. These proposed credit quality standards are reasonable. Resp. Ex. 8, p. 6.

The credit protections put in place by the Ameren Companies cannot provide 100% coverage for any and all possible credit-related risks. However, the credit provisions are

intended to strike a reasonable balance between providing adequate protection against default risk and adversely affecting participation by qualified bidders. Resp. Ex. 14.0, p. 5.

The Ameren Companies intend to apply the same credit provisions to all BGS Suppliers throughout the SFC terms. Resp. Ex. 21.0, p. 2. If, however, unforeseen circumstances warrant establishment of less restrictive creditworthiness standards, the Ameren Companies will seek review of any proposed changes to the creditworthiness standards by the Staff and/or the Commission in advance of implementing changes. *Id.* at p. 2-3.

a. Creditworthiness Assurances

Before the auction all BGS Suppliers must submit a pre-auction letter of credit as part of the application process. Resp. Ex. 14.0, p. 4. This provides protection in the event a BGS Supplier: (a) provides material misrepresentations in the application; (b) fails to sign a SFC in accordance with the auction rules; or (c) fails to meet the SFC's credit requirements. *Id.* Any BGS Supplier that intends to rely on a guarantor also must provide a letter of intent to provide a guaranty from the proposed guarantor. *Id.* Depending on their creditworthiness, BGS Suppliers also may be required to demonstrate an ability to provide a specified level of collateral in proportion to their indicative offers (*e.g.*, a letter of reference from a bank that would be willing to provide a letter of credit for up to a specified amount). *Id.*

BGS Suppliers must cover their mark-to-market credit exposure to the Ameren Companies (*i.e.*, the difference between its obligations under its supply contract and forward market conditions) through an unsecured line of credit, a guarantee, or with a cash deposit or letter of credit. Resp. Ex. 8.0, pp. 6-7. BGS Suppliers can receive an unsecured line of credit from the Ameren Companies if it maintains a certain credit rating from the major credit rating agencies. *Id.* at p. 6. The amount of unsecured credit available to the BGS Supplier is based on

the suppliers credit rating. If a BGS Supplier uses a guarantor, the guarantor will be subject to these same creditworthiness standards. *Id.* at p. 7.

If a BGS Supplier's credit exposure to the Ameren Companies exceeds that BGS Supplier's credit limit and posted security, the Ameren Companies may make a "margin call" under which the BGS Supplier will be required to provide additional margin in the form of cash or letter of credit. *Id.*

b. Margin Call - 110%

As described above, if a BGS Supplier's total exposure amount exceeds its credit limit, the Ameren Companies will require that the BGS Supplier provide margin in the form of cash or letter of credit. The BGS Supplier's total mark-to-market exposure to the Ameren Companies will be increased by 10 % to account for exposure associated with energy supply and with additional products required under the contract. Resp. Ex. 14.0, p. 5. Some parties claim that BGS Suppliers should be required to provide only 100 % of the mark-to-market amount. DYN Ex. 2.0, p. 6. Such claims should be rejected. Multiplying the mark-to-market amount by 1.1 allows the calculation to cover not just the financial exposure associated with energy supply, but also the exposure associated with additional products and services required by the contract, including capacity, capacity reserves, load shape, basis, odd lot, and illiquidity premium. Resp. Ex. 14.0, p. 7. "Dynergy does not disagree that the multiplier may account for additional items." DYN Ex. 4.0, p. 9. Dr. Salant also acknowledges the need for the 1.1 multiplier. ICC Staff Ex. 1, pp. 102-103.

If a BGS Supplier defaults and the Ameren Companies do not have access to the 10 % multiplier the utilities (and thus the ratepayers) could fully realize any and all credit exposure associated with capacity, capacity reserves, load shape, basis, odd lot, and illiquidity premium. Resp. Ex. 21.0, p. 8.

c. Notice of Changing Financial Condition

BGS Suppliers are required to notify the Ameren Companies if there is a change in their financial condition -- credit rating changes, or credit watches with negative implications and any materially adverse change guarantors' financial condition. Resp. Ex. 8.0, p. 7. Requiring direct, prompt notification is necessary to ensure that the Ameren Companies are informed of the situation as soon as possible. Resp. Ex. 14.0, p. 7. Even if this information may be publicly available, changes in financial condition may not become immediately known without such a disclosure. *Id.* Once the Ameren Companies become aware of such an adverse change, the BGS Supplier may be required to provide additional security if its credit rating is downgraded. Resp. Ex. 8.0, p. 7.

The Ameren Companies also are required to provide prompt notification to the BGS Suppliers in the event that any Ameren Company should fall below investment grade. Resp. Ex. 14.0, p. 8. If the Ameren Companies' credit rating is downgraded below investment-grade level, BGS Suppliers may seek the return of cash held as security and require accelerated payments under the applicable contracts. *Id.* at p. 9.

d. Ameren Companies' Creditworthiness

The SFC's also provide for credit protections for the BGS Suppliers. If the credit rating of one of the Ameren Companies falls below investment grade, two things will happen. First, the amount of cash collateral held related to the level of exposure that such downgraded Ameren Company has to a BGS Supplier will be transferred to a qualified institution upon receipt of written request from the BGS Supplier. *Id.* at p. 8. Collateral held by Ameren Companies that carry investment grade ratings may continue to be held by them at their discretion. *Id.* Second, the payments due from such downgraded Ameren Company would automatically be accelerated

to twice per month. *Id.* at p. 9. Payments due from the Ameren Companies that carry investment grade ratings will continue to be made on a monthly basis. *Id.*

e. Letters of Credit Must be Transferable and Must Automatically Renew

The Ameren Companies require that letters of credit provided by the BGS Suppliers be transferable and include automatic renewal terms. *Id.* at p. 10. These requirements provide important protections to the Ameren Companies.

Transferability is a standard feature of letters of credit. *Id.* It protects the letter of credit beneficiary in case any type of transfer is warranted and needed. *Id.* Maintaining transferability is a valuable feature of the letter of credit. The automatic renewal requirement provides additional assurance that a letter of credit will remain in effect for the duration of tranches that extend beyond one year. *Id.* It effectively ensures that a valid letter of credit remains in effect until specific actions are undertaken by the parties. *Id.*

f. Bilateral Credit

The SFCs implement credit provisions that balance interests between: (1) protecting the utilities and ratepayers from default risk; and (2) adversely affecting participation by qualified bidders. Resp. Ex. 21.0, p. 4. These credit provisions strike a reasonable balance of these interests. *Id.*

SFCs differ from the typical power sale agreements between unregulated parties. *Id.* at pp. 5-6. The SFCs are for the sale of power to serve regulated public utilities' retail load and are not unregulated contracts between unregulated parties for the sale of wholesale power. *Id.* Unlike the BGS Suppliers, the Ameren Companies, as regulated public utilities, are subject to the continuing regulatory scrutiny of the Commission. *Id.* at p. 6. While Commission oversight cannot eliminate the existence of credit exposure for the BGS Suppliers, such oversight serves to

reduce the probability that the Ameren Companies would default on payments under the SFCs. *Id.*

BGS Suppliers may have a measurable credit exposure. However, the risk that the BGS Suppliers could actually realize credit losses is low. *Id.* at p. 7. As a result, premiums, if any, that a BGS Supplier may embed in its offer should be small. *Id.* There is no evidence showing that premiums would exceed the Ameren Companies cost of meeting collateral posting requirements. Auctions in other states without bilateral credit requirements have proven to be successful. *Id.*

3. Proposed Clarifications and Modifications Accepted by the Ameren Companies

As described above, the Ameren Companies have continually sought to revise the SFCs where appropriate in response to feedback received from BGS Suppliers and Staff. The Ameren Companies have substantially and materially modified many critical elements of the SFCs through out the process. The material modifications accepted by the Ameren Companies include the following:

NITS - Clarified how Network Integration Transmission Service is acquired by the Ameren Companies from MISO. Resp. Ex. 11.0 (revised), p. 15.

Cooperation - Clarified, as suggested by Dynegy (DYN Ex. 1.0, p. 16), that the both the BGS Supplier and the Ameren Companies must cooperate with each other regarding compliance with governmental directives. Resp. Ex. 11.0 (revised), p. 11.

Compliance with MISO policies - Clarified, as suggested by Dynegy (DYN Ex. 1.0, pp. 15-16), that the Ameren Companies are obligated to comply with MISO's operating instructions, policies, and procedures. Resp. Ex. 11.0 (revised), p. 11.

Demarcation Point - Clarified, as suggested by CCG (CCG Ex. 1.0, pp. 10-11), that the BGS Supplier is responsible for all new or increased charges before the Delivery Points and that the Delivery Points are the points of demarcation between the responsibilities and risks borne by the Ameren Companies and the responsibilities and risks borne by the BGS Suppliers. Resp. Ex. 11.0 (revised), p. 9.

Tax Exemption Certificate - Adopted, as suggested by CCG (CCG Ex. 1.0, pp. 9-10), a bilateral obligation to provide any applicable tax exemption certificates to the other party. Resp. Ex. 11.0 (revised), p. 8.

Termination - Agreed, as suggested by CCG (CCG Ex. 2.0, p. 3), that all SFCs between the Ameren Companies and a BGS Supplier will be terminated upon early termination of any one such agreement. Resp. Ex. 18.0, pp. 2-3.

Force Majeure - Included, as suggested by Staff and Dynegy, (ICC Staff Ex. 1.0, p. 104; DYN Ex. 1.0, p. 16), *force majeure* language similar to ComEd's, with the exception that the unavailability of energy in the MISO spot energy markets will not entitle the BGS Supplier to *force majeure* relief. Resp. Ex. 11.0 (revised), p. 2.

Independence of Interconnection Agreements - Adopted language to address Dynegy's concerns (DYN Ex. 1.2, p. 8) that the SFCs should not modify any existing interconnection agreements. Resp. Ex. 11.0 (revised), p. 9.

Termination Payment Calculation - Clarified, as suggested by CCG (CCG Ex. 1.0 at pp. 8-9), the right of the non-defaulting party to calculate a single termination payment that would apply mutually to the Ameren Companies and the BGS Supplier. Resp. Ex. 11.0 (revised), p. 5.

ComEd Contract - Adopted numerous revisions to make the Ameren Companies' SFCs as similar as possible to the ComEd SFCs given the utilities' different operational situations. Resp. Ex. 18.0, p. 2-3.

Credit Terms - Adopted many revisions to the creditworthiness provisions in response to suggestions by Staff and many other parties. *See generally* Resp. Exs. 14 and 21.

Eligibility for Future CPAs - Clarified, as suggested by Dynege (DYN Ex. 1.0, pp. 13-14), that termination of an SFC does not result in that the BGS Supplier becoming ineligible to participate in future CPAs if the Ameren Companies are the defaulting parties. Resp. Ex. 11.0 (revised), p. 16.

4. Proposed Clarifications and Modifications Not Accepted by the Ameren Companies

The Ameren Companies did not adopt all suggested modifications to the SFCs. Many of the rejected modifications and the reasons for rejection are described below.

New Taxes - The Ameren Companies did not adopt CCG proposed revisions (CCG Ex. 2.0, p. 4) to the SFC that would allow the Commission to determine whether new taxes should be passed on to retail customers. Resp. Ex. 18.0, p. 4. The SFCs were drafted to provide a clear line of demarcation with respect to responsibility for taxes. *Id.* The BGS Supplier taking responsibility for taxes up to the Delivery Points. *Id.* The Ameren Companies taking responsibility thereafter. *Id.* The Ameren Companies have the obligation to provide retail service and are responsible for the collection and payment of all taxes related to retail sales that are imposed after the Delivery Point. *Id.* at p. 5. CCG's proposal has no place in the SFC and should be rejected.

Joint and Several Liability - The Ameren Companies cannot undertake to commit themselves to assuming joint and several liability to the BGS Suppliers because they are not

authorized by the Commission to pay or guarantee each others' debt or obligations. Resp. Ex. 18.0, p. 6. The Ameren Companies have not sought such authorization from the Commission. *Id.*

The BGS auctions permit each of the Ameren Companies to acquire generation supply for the post-2006 period. Resp. Ex. 11.0 (revised), p. 13. Each of the Ameren Companies has its own unique load and its own unique generation needs. *Id.* The BGS Suppliers will be separately supplying each of the three Ameren Companies. *Id.*

The Ameren Companies, therefore, have rejected proposals (ICC Staff Ex. 1.0, p. 106; DYN Ex. 2.0, p. 9) that the Ameren Companies be jointly and severally liable for each other's SFC obligations.

Prudent Utility Practice - The SFCs currently provide that the Ameren Companies "shall not be required to accept quantities of Energy, Capacity or any other component of BGS-FP Supply utilized by Customers on an instantaneous basis as a function of electrical load, in excess of such Customer's instantaneous consumption of such component of BGS-FP Supply." Resp. Ex. 18.0, p. 7. Dynegy suggests that BGS Suppliers should be paid for the energy that would have been used if not for a disruption of electric service to end use customers due to an act of negligence on the part of the Ameren Companies. DYN Ex. 1.2, p. 4. Dynegy proposes a "Prudent Utility Practice" standard for this risk allocation. *Id.*

The Ameren Companies' objective is not to minimize the resulting prices in the auction but rather to minimize the total cost to the consumer. Resp. Ex. 18.0, p. 6. The Ameren Companies have attempted to accomplish this by weighing all potential costs and placing the risk on the BGS Supplier or the Ameren Companies in a manner that will minimize the total cost borne by the consumer. *Id.* Dynegy's proposal might subject the Ameren Companies to a

prudence review of every distribution system outage. The increased prudence reviews and disputes could significantly increase the Ameren Companies' cost. *Id.* at p. 7. These costs ultimately would be borne by the consumers. In this instance, having the BGS Supplier factor the risk of lost sales due to outages attributable to the Ameren Companies negligence into its bid price results in an more efficient process and ultimately the lowest cost to the end use consumer. *Id.*

Defaulting ARES - The Ameren Companies are permitted to retain a portion of the amounts received from an ARES as damages, penalties, or forfeited security due to the failure of such ARES to provide adequate notice of customer switching or other default. Resp. Ex. 18.1. §2.1.c(vii). Dynegy claims that this offset right should be eliminated because, at least in part, the offset amount is vague and discretionary. DYN Ex. 1.2, p. 7. The retained amounts cannot be arbitrarily determined by the Ameren Companies. The retained amounts must be no greater than appropriate to offset their costs or losses attributable to the ARES' default. Resp. Ex. 18.0, p. 8. The Ameren Companies, therefore, rejected Dynegy's unfounded claim.

Delivery Point - The Ameren Companies seek to define term "Delivery Point" in a manner that is consistent with the MISO energy markets. *Id.* at p. 9. The MISO's current business practices create the need for two unique elements that must be accounted for in the definition. First, the MISO allows only one market participant per load zone. *Id.*. Second, the MISO does not allow for the creation of load zones that span multiple control areas. *Id.* at p. 10. Together, these mean that the Delivery Point definition must recognize three BGS Supplier-specific load zones for each BGS Supplier (one in each of the three Ameren Company control areas).

The definition recognizes that MISO will require each BGS Supplier have separate load zones and that those load zones will be defined as encompassing the BGS Suppliers share of the BGS load of a given Ameren Company. The definition also recognizes and that each BGS Supplier will need separate load zones for each of the three Ameren Company control areas. *Id.* The basic principles that are embedded in this definition are appropriate and should remain in the Ameren Companies' SFCs. *Id.*

Although a more precise definition of delivery point is not required, the SFC finalization process identified above is the proper time and place to resolve Dynegy's concerns.

Daily Load Forecasts - Dynegy proposes that that the Ameren Companies provide daily load forecasts of the portion of load to be served by each BGS Supplier. DYN Ex. 1.2, p. 13. This proposal should be rejected for many reasons. Dynegy incorrectly assumes that the Ameren Companies "currently and for years prior have (1) prepared and used similar forecasts; and (2) assembled the tools and collected the data ... needed to provide accurate forecasts" DYN Ex. 1.2, p. 13. The Ameren Companies do not prepare (and have never prepared) such forecasts (differentiated by customer class, incorporating customer switching data). Resp. Ex. 18.0, p. 11. Second, the historical data necessary to build and train such forecasting models will be equally available to BGS Suppliers and the Ameren Companies. *Id.* at p. 12. Third, the BGS Supplier ultimately bears the risks associated with inaccurate load forecasting. *Id.* BGS Suppliers might be hesitant to rely on any Ameren Companies-produced forecast where the BGS Supplier is concerned about volume risks. *Id.* at p. 12-13.

Should the Commission require Ameren Companies to provide some form of forecasting services to the BGS Suppliers, the Ameren Companies should not be required to provide data in any level of detail greater than that which is produced today. *Id.* at p. 13. The contract language

must be clear and unambiguous that the Ameren Companies are not liable for any consequences arising from the use of such data by a BGS Supplier; that such data is non-binding and its accuracy is not warranted or guaranteed in any fashion. *Id.*

Cure Period - A BGS Supplier would be in default of the SFCs if, among other things: (a) the BGS Supplier loses its ability to make purchases from or sales into the MISO markets; (b) the MISO holds the Ameren Companies responsible for supply not provided by the BGS Supplier (that it was responsible for providing); or (c) the BGS Supplier fails to comply with the creditworthiness standards in the SFC. Resp. Ex. 18.1, p. 34. No cure period is permitted for these events of default. *Id.* at p. 38. Dynegy requests that the BGS Suppliers be granted a three-day cure period for these default events. DYN Ex. 1.0, p. 18.

The SFCs safeguard the reliable and uninterrupted provision of electricity. Resp. Ex. 11.0 (revised), p. 5. It is essential that BGS Suppliers maintain their ability to serve the load at all times. *Id.* The 3-day cure period proposed by Dynegy jeopardizes this ability. Moreover, permitting a cure period in the event of a BGS Supplier's failure to maintain compliance with the creditworthiness requirements could significantly expose the Ameren Companies to the volatile energy markets. *Id.*

Dynegy's cure period proposal, therefore, must be rejected.

MISO Default - The MISO has the authority to determine whether a BGS Supplier is a Market Participant in good standing and is in compliance with all obligations, rules and regulations, as established and interpreted by the MISO. *Id.* at p. 7. Maintaining good standing with the MISO, as established and interpreted by the MISO, is a continuing obligation of the BGS Suppliers. *Id.*

Dynergy suggests that the MISO's actions and determinations should not be allowed to cause a BGS Supplier to go into default. DYN Ex. 1.0, p. 17. SFC defaults, however, result from the any action or inaction of the BGS Supplier, not of the MISO. Resp. Ex. 11.0 (revised), p. 6. The BGS Supplier's failure to remain in good standing with the MISO would result, if at all, from the BGS Supplier's action or inaction, not on the actions of the MISO. The BGS Supplier must pay the consequences of its actions. It cannot be insulated from these consequences simply because there is an intervening relationship with the MISO.

MISO Changes - Changes in the MISO's markets and market rules almost inevitably will occur as the market matures. Resp. Ex. 11.0 (revised), p. 9. The parties to the SFCs share the risks inherent in dealing with a new market and new market rules. *Id.* Dynergy criticizes the SFCs for imposing the risk on the BGS Suppliers. DYN Ex. 1.0, p. 11. The risk of changes to the MISO market and to MISO's market rules are borne by both BGS Suppliers and the Ameren Companies. The SFCs use the Delivery Points as the demarcation line separating the MISO market rule risks borne by the BGS Suppliers from those borne by the Ameren Companies. Resp. Ex. 11.0 (revised), p. 9. The SFCs allocate this risk using the Delivery Points as the demarcation line. *Id.* Dynergy's complaints are unfounded and should be rejected.

MISO Interpretation - Dynergy further concludes that neither the BGS Supplier nor the Ameren Companies should be held to the MISO's interpretation of its own rules. DYN Ex. 1.0, p. 12. The Ameren Companies rejected this conclusion. Resp. Ex. 11.0 (revised), p. 10. As the parties participate in the MISO markets, they must agree to be bound by the MISO's rules and its interpretation of its rules. If a SFC party objects to a rule or to the MISO's interpretation of its rules, the SFC party has the ability to seek relief or other recourse in the appropriate forum. *Id.*

Renewable Energy - Dynegy further objects to the inclusion of any obligations related to not-yet-created renewable energy, demand side management, and low-income programs should not be imposed on BGS Suppliers. DYN Ex. 1.0, pp. 7-9. BGS Suppliers, however, are not exposed to any liability with respect to an Renewable Energy Portfolio Standards (“RPS”) that does not exist at the time the SFCs are entered. Resp. Ex. 11.0 (revised), p. 15. The SFCs do not provide for the allocation of responsibility with respect to demand side management or low-income programs. Resp. Ex. 11.0 (revised), p. 15.

Assignment to Non-Creditworthy Entity - The SFC’s permit the Ameren Companies to assign the agreements under certain circumstances. Dynegy objects to the assignment provisions to the extent they would permit the Ameren Companies to assign the SFCs to a non-creditworthy party. DYN Ex. 1.0, p. 20. Dynegy’s concerns address a customary exclusion from the requirement that consent to an assignment be obtained. Resp. Ex. 11.0 (revised), p. 17. That exclusion applies in the event: (a) the entity receiving the assignment is succeeding to all or substantially all of the assets of the company in question (*e.g.*, through a merger); (b) such entity agrees in writing to be bound by all of the terms and conditions to which the assignee was bound; and (c) all necessary regulatory approvals have been obtained. *Id.*

These customary terms appropriately balances the Ameren Companies’ need for flexibility while protecting the BGS Supplier’s interests. Dynegy’s objections should be rejected.

M. Other Auction Design Issues

VI. PROCUREMENT PROCESSES ALTERNATIVES

No party offered any meaningful or realistic alternative to the competitive auction procurement process proposed by the Ameren Companies. This is not surprising in any respect. As discussed above, the auction process has been used successfully elsewhere and was adopted by the Ameren Companies after extensive discussion and consultation with numerous other stakeholders. Moreover, the auction fully satisfies the requirements of FERC, which has exclusive jurisdiction over wholesale transactions. The few alternatives offered were in the nature of fantasy – they assumed either that the Ameren Companies can avoid the wholesale market (they can't), that market participants will willingly sell below market (they won't), or that the Ameren Companies have a means to force sellers into below-market sales (they don't). The Ameren Companies do not have the luxury of fantasy – they leave that to parties chasing headlines. Instead, the Ameren Companies have the obligation to procure power at the lowest cost the market can provide them back here on Planet Earth, where the Companies operate and their customers require power.

A. Active portfolio management

CUB witness Steinhurst proposed that the Ameren Companies procure power through “active portfolio management,” which is not a process at all. Dr. Steinhurst's proposal was not so much a proposal for procurement as it was an invitation for second-guessing. Moreover, his proposal was based on the unsubstantiated assumption – or fantasy – that a utility using this approach would be able to beat the market, consistently. To the contrary, his proposal would be impracticable and nearly impossible to police. There is no basis for assuming that any utility could consistently beat the market price.

As noted above, the Ameren Companies propose use of the vertical tranche approach used successfully elsewhere. Mr. Pfeifenberger compared the Ameren Companies' approach

with the portfolio management proposed by Dr. Steinhurst. As Mr. Pfeifenberger explained, the vertical tranche approach promises procurement efficiencies as the difficult tasks of least-cost resource portfolio selection, risk management, and day-to-day portfolio management utilize the experience and expertise of wholesale suppliers in deregulated power markets, without the need to duplicate these functions and capabilities within the regulated utility. Resp. Ex. 7.0, p. 7. In addition, the approach allows for participation of a wide, diverse group of suppliers and provides stable but market-based rates that customers can compare easily with other retail market options. Such straightforward comparison of choices for consumers furthers the development of retail competition. *Id.*

In contrast, the portfolio management approach, which is more akin to traditional integrated resource planning and “energy plans” used prior to the introduction of retail access, would allow for somewhat more procurement flexibility by the utility. It also may require less supplier sophistication, as single -asset suppliers can sell directly to the utility and suppliers can bid traditional energy and capacity products. Resp. Ex. 7.0, p. 7. However, the apparent accommodation of less sophisticated suppliers is not a true advantage, as wholesale markets already accommodate single-asset suppliers and the sale of traditional energy and capacity products. The drawbacks of the portfolio management approach, for example, include significantly more complex resource selection and bid evaluation criteria that reduce the transparency of the procurement process and can result in a lengthy and more contentious regulatory process as procurement decisions are second-guessed based on after-the-fact analysis. *Id.* at 8. This aspect, when combined with the need for rate adjustments (e.g., due to variability in average costs driven by factors such as customer switching, spot market sales and purchases, or plant outages of single-asset suppliers), can result in more uncertainty for retail customers as a

more substantial portion of costs and retail rates may not be known until after the fact. *Id.* This uncertainty also can create significant procurement -related regulatory risks for the utility (such as disputes over procurement decisions and the potential for stranded costs due to unanticipated customer switching) that are difficult to manage by a distribution company in the absence of asset-based rates of return. *Id.*

Mr. Nelson also explained that, for several reasons, CUB's portfolio design proposal is the wrong approach. Resp. Ex. 17.0, p. 9. First, the Ameren Companies are now primarily in the business of delivering power to their customers, and do not have the internal resources to perform the generation portfolio management responsibilities that Dr. Steinhurst recommends. A principal reason for selecting the procurement approach being advocated by the Ameren Companies was to continue to focus their resources on delivery services, and avoid unnecessary or duplicative generation operations. *Id.* at 9-10. By divesting generation facilities, the Ameren Companies have relinquished generation responsibilities and risks to generating companies. The competitive procurement auction approach is consistent with this decision, as it allows for the Ameren Companies to purchase a standard power supply product, through a bid that would be chosen on the basis of one criterion – price. No further analysis would be required.

Dr. Steinhurst's proposal, on the other hand, would require the Ameren Companies to hire new employees with generation portfolio management expertise, add software and systems, create policies and procedures and create a new division devoted solely to active portfolio management. Implementing this proposal would undo the benefits created by the divestiture. Resp. Ex. 17.0, p. 10.

Moreover, there is no reason to believe that the managed portfolio approach would yield lower costs than the market. The managed portfolio option is not going to consistently produce

below-market costs over the long-term – in fact, no approach that will do so. Resp. Ex. 17.0, p. 10. One approach may yield a better result than another in any particular period, through luck or otherwise, but any scheme that assumes that you can consistently beat the market is destined for failure. For an example, one need only look to the disastrous consequences of California’s original reliance on the spot market, as a central component of that state’s electric industry restructuring. There, a period of very low spot prices was followed by a period of unprecedented high prices. In that case, a person who had previously bought long-term forward contracts went from imbecile to genius, virtually overnight, while the one-time genius relying on the spot market suffered the opposite fate. Resp. Ex. 17.0, pp. 10-11.

The belief that you can always beat the market is the regulatory equivalent of fool’s gold – it’s a temporary illusion of success. If it were so easy, everyone would be doing it – and interestingly enough, such practice would itself eventually set the market. The fact that several other states where utilities have divested generation have chosen instead to pursue procurement mechanisms that are intended to achieve stable market prices, and have not tried to beat the market, or ride the spot market, should send a loud and clear signal to the Commission.

B. Request for Proposal

The Ameren Companies do not believe that a specific proposal for a “request for proposal” (“RFP”) or sealed bid approach has been made. This was one of the options that Dr. Steinhurst listed as an available procurement mechanism under the active portfolio management approach. As Mr. Pfeifenberger discusses, other states have used an RFP process. The Ameren Companies believe that an auction is preferable to an RFP and, accordingly, have proposed an auction.

Dr. LaCasse explained that an RFP process would not have the advantages of an open auction. A sealed bid process presents bidders with more uncertainty, and forces them to guess.

Resp. Ex. 6.0, p.20. A sealed bid process does not promote the best match of product to suppliers or the selection of efficient suppliers. *Id.*

C. Affiliate contract

AG and CUB suggest that customers have some entitlement to power from formerly plants owned by the Ameren Companies, and now owned by affiliates, affiliates on a “cost of service” pricing basis, rather than at market prices. The source of this right is apparently that, as expressed by AG witness Rose, the ratepayers “paid for” these plants when they were owned by the Ameren Companies. AG Ex. 5.0, p. 10. There is no such entitlement, and a procurement strategy that assumes such transactions will occur is doomed.

Most importantly, the Ameren Companies’ affiliates are under no legal obligation to sell even a single kilowatt-hour to the Ameren Companies. If the Ameren Companies are waiting for their affiliates to sell to them at a price below market, they may be waiting a very long time. There is no reason for any company to sell to the Ameren Companies at a price below market. It is foolish to assume that it would happen.

Further, a no-bid, below market transaction between the Ameren Companies and an affiliate would not satisfy FERC’s *Edgar* standards. The ICC has no authority to dictate the rates of a wholesale transaction or to override the FERC’s requirements for a wholesale transaction. If the FERC has granted market-based rate authority to an entity, the ICC cannot require it to transact on some other basis,

In addition, requiring the Ameren Companies to enter into affiliate agreements instead of competitively bidding their power supply would contradict the conditions the ICC imposed when Ameren Corporation acquired CILCO and IP. The ICC specifically required that the Ameren Companies competitively bid power supply, and Ameren closed the transactions on that basis.

The Ameren Companies do not believe that the ICC may alter the conditions it imposed now, to the detriment of parties who relied on those conditions.

Also, ratepayers haven't "paid for" these plants, as Dr. Rose asserted. They paid for the use of these plants, while they were using them. Resp. Ex. 17.0, p. 19. Mr. Nelson explained that it is analogous to leasing a car - one pays all of the capital costs and expenses during the lease period, but when it's over, one has no entitlement to the continued use of the car. The lessee has not purchased title to the car. *Id.*

In sum, the proposal is fraught with both legal and practical problems. The ICC has no authority to dictate such terms, and there is no reason to believe that the affiliates would willingly accept such terms. Instead, they would sell their power elsewhere, leaving the Ameren Companies with no choice but to access the wholesale market.

D. Other competitive procurement mechanisms

The Ameren Companies are not aware of any other procurement mechanisms that were not proposed in this proceeding or considered and rejected in the workshop process. made, but AG witness Reny did muse at length regarding "multilateral negotiation" which might occur in an RFP setting. Dr. Reny's musings do not form the basis for any realistic procurement strategy.

Dr. Reny stated that there are conditions under which, compared to an auction without a price cap, a lower price can be achieved by negotiating with each potential supplier one by one. AG Ex. 4.0, p. 4-5. These conditions include a wide disparity of supplier costs, the availability of information concerning supplier costs, and an absence of bargaining power on the suppliers' side.

Dr. LaCasse explained that these conditions are likely to hold for the procurement of the Ameren Companies' full-requirements tranches. Reasonably accurate information about each supplier's cost of providing full requirements service is unlikely to be available. Resp. Ex. 19.0,

p. 82. Furthermore, although the Ameren Companies can leverage their ability to buy all load in a single auction, this does not necessarily mean that there would be an absence of any bargaining power on the other side of the market. Finally, suppliers' costs could more accurately be described as closely clustered than widely disparate. A supplier's costs in the auction are really their opportunity costs of participation. Although all bidders do not face the same exact opportunity cost, they are all evaluating a common market opportunity on the basis of a common forward market. Resp. Ex. 19.0, pp. 82-83.

Accordingly, Dr. Reny's thoughts about multilateral negotiations cannot serve as the basis for any reasonable procurement proposal.

E. Other procurement processes alternatives

The Ameren Companies are not aware of any other procurement process alternatives that were not proposed in this proceeding or considered and rejected in the workshop process.

VII. TARIFF AND RATE DESIGN ISSUES

A. General tariff and rate design issues

There are two major components to the Ameren Companies' filings in these proceedings: is the auction process and its related matters and the rate or tariff requests associated with the filings. With regard to the latter, the Ameren Companies are proposing Basic Generation Service (BGS) tariffs as well as Rider MV – Market Value of Power and Energy. The BGS tariffs are the retail rates for power supply being offered to customers post-2006. Rider MV is applicable to any tariff under which the Ameren Companies sell power and energy supply to retail customers post-2006. Retail prices for electric power and energy supplied pursuant to the BGS rates, or real-time pricing (RTP) or any other tariffs, are determined in accordance with Rider MV. The BGS rates along with the Delivery Service (DS) rates, including applicable

transmission service charges, will provide customers with virtual bundled electric service post-2006.

Rider MV provides for an appropriate determination of the market value of power and energy, as a function of the contracts applicable to the markets in which the Ameren Companies sell, and retail customers in their service areas buy, electric power and energy. Rider MV incorporates the prices and terms contained in the wholesale contracts entered into by the Ameren Companies as a result of the auction, and translates the prices into seasonal and peak and off-peak values, as applicable, for use in calculating individual supply-related charges in the BGS rates. Resp. Ex. 4.0, p. 5. Rider MV also sets the price for power supply for the Purchased Power Option (PPO) and is a component of the retail price cap for utility-supplied power as established by Section 16-111(i) of the Customer Choice Law. 220 ILCS 5/16-111(i); Resp. Ex. 4.0, p. 7.

The Customer Choice Law requires a utility to offer the PPO to those customers who pay transition charges during the mandatory transition period. Rider MV provides that after January 1, 2007, any customer that qualifies for PPO service from an Ameren Company will take that service under the terms and charges applicable to Rider BGS, Rider BGS-L or RTP-L, assuming they otherwise qualify for the service. The PPO is consistent with the Customer Choice Law insofar as it is priced equal to the market value. Resp. Ex. 4.0, pp. 7-8.

Currently the Ameren Companies' Market Value Index (MVI) formulae uses the Into Cinergy as the proxy for the Ameren Companies' zone specific data to set the market price. However, the competitive procurement auction being recommended by the Ameren Companies in these proceedings, which will reflect the specific Ameren Companies' power supply offerings, is a precise measure of the market price. Therefore, the continued use of the Into Cinergy

measures as a means by which to estimate the market price is less desirable than what is anticipated from the auction process. Mr. Robert Mill concluded that “. . . we are not replacing it [MVI] with a new and improved proxy, but rather with the actual prices in this market for the actual product being purchased by the utilities.” Resp. Ex. 4.0, p. 9.

The translation of the successful winning bid prices from the auction process to the BGS rate is accomplished through what it termed the translation tool or rate prism. After each auction is completed and the final clearing prices are determined, the Ameren Company translates those prices into power supply charges applicable to retail customers. The translation from the final clearing prices into retail charges employ ratios that compare the estimated costs to procure and supply for each individual customer group at particular times along with delivery voltage levels, to the overall actual cost of procuring power supply for the Ameren Companies’ customers eligible for the power supply procured through the auction. The utilization of these ratios ensures that the power supply costs are appropriately allocated among retail customer groups by reflecting each such groups’ responsibility for such costs. This is the same approach that was utilized in New Jersey to develop class rates for retail customers. Mr. Wilbon Cooper explained in great detail the the rate prism process, including the tables that are utilized and provided further explanation as to how the formulae works within each table to produce the retail price for the particular BGS rate. Resp. Ex. 5.0, pp. 18-32.

Other key components of Rider MV are the Market Value Adjustment Factor (MVAF) and Contingency Supply Factor (CSF). The MVAF performs the function of tracking the monthly differences between retail revenue for power supply and the wholesale power supply costs associated with each of the products purchased pursuant to the Supplier Forward Contracts. Any difference that may result is applied to customer usage as a credit or charge in a subsequent

billing period. The CSF is applicable in the event the Ameren Company is required to procure power supply outside the auction process. The CSF compares the power supply costs procured outside the auction with the power supply costs that are reflected in Rider MV, and any difference is applied in the same manner as the MVAF. Resp. Ex. 4.0, pp. 8-9.

B. Matters concerning Rider MV

1. Rider MV – Organization

As is typical with any other rate or tariff, Rider MV includes an Applicability section as well as Purpose and Definitions sections. Unique to Rider MV, however, are provisions titled Competitive Procurement Auction Process, Limitations and Contingencies, Retail Customers Switching Rules, and Translation to Retail Charges, all of which will be later addressed.

2. Rider MV – Definitions

a. Customer Supply Group definitions

There are nine Customer Supply Groups defined under Rider MV: Residential Service Customer Group (BGS-1), Small General Service Customer Group (BGS-2), General Service Customer Group (BGS-3), Large General Service Customer Group (BGS-4), Dusk to Dawn Lighting Customer Group (BGS-5), Optional Real-Time Pricing Customer Group (RTP), Real-Time Pricing Large Customer (RTP-L), Self-Generating Customer Group, and Partial Requirement Customer Group.

No party took issue with the Customer Supply Group definitions.

i. Description of Power Supply Offerings

The Ameren Companies are proposing the application of fixed power rates by service classification across the entire Ameren footprint in Illinois. Customers within a particular service classification will be billed under the same power supply rates regardless of which Ameren Company serves them. Ameren Companies' customers will be given a choice between

a fixed price product or a real time pricing product for their power supply. Resp. Ex. 5.0, pp. 5-6.

The Ameren Companies are proposing two BGS offerings of fixed price power service as Rider BGS/Basic Generation Service, which is applicable to customers with demands less than 1 MW (BGS-1, BGS-2, BGS-3 and BGS-5) , and Rider BGS-L/Basic Generation Service-Large (BGS-4), which is applicable to customers with demands equal to or greater than 1 MW. Resp. Ex. 5.0, p. 6.

As stated, the Ameren Companies are making available RTP products for their customers. They are bidding one RTP product for customers with demands equal to or greater than 1 MW; however, through a rate design application, customers with demands less than 1 MW will also have the opportunity to elect RTP. Accordingly the two RTP offerings are Rider RTP/Real Time Pricing, which is applicable to customers with demands less than 1 MW, and Rider RTP-L/Real Time Pricing-Large, which is available to customers with demands equal to or greater than 1 MW. Resp. Ex. 5.0, p.7.

ii. Response to BGS Classification

For customers with self-generation capacity of less than 5 MW, the Ameren Companies will offer power supply under either Rider BGS or Rider RTP. This allows those customers with small to medium sized self-generation units the flexibility of selecting applicable BGS or RTP service flexibility in operating their generators in a manner consistent with their internal economics. Resp. Ex. 5.0, p. 36.

For customers with self-generation capacity equal to or greater than 5 MW, the Ameren Companies are offering a “hybrid” power service under Rider BGS and Rider RTP or, in the alternative Rider RTP only. This hybrid Rider BGS and Rider RTP power supply is offered because these customers typically utilize excess steam from their operations to run their own

generation. These customers require a hybrid billing that adequately reflects the cost of providing power supply for their unique operations and provides a proper price incentive when determining whether self-generation is more economic than market based RTP. However, the billing system must minimize the opportunity for these customers to place low load-factor load on the system at prices that do not actually reflect market price. Mr. Cooper went on to explain further the manner in which these customers will be billed. Resp. Ex. 5.0, pp. 37-38.

For customers desiring power supplies from the Ameren Companies to supplement power provided from an ARES, customers will be served under the applicable RTP offering for that customer. The provision of this service to this particular customer class is consistent with proper rate design and price incentives, to ensure that these customers do not manipulate the use of the Ameren Companies' procured power supplies. Resp. Ex. 5.0, pp. 38-39.

There was little opposition to the rate classifications put forth by the Ameren Companies. Staff witness Peter Lazare questioned whether there had been an appropriate explanation for the rate classes. Such explanation Mr. Cooper explained in his direct testimony that the development of these rate classifications reflect intra-class homogeneity and also limits the ability of customers to switch or migrate from one customer class to another. The intent is to ensure that customers with comparable load and service characteristics be included in the same class. The Ameren Companies' rate design ensures that customers within these classes are homogeneous in load, load characteristics, and metering installations. Resp. Ex. 5.0, p.8. Further, in response to a data request from the Staff, the Ameren Companies outlined the following factors in developing these particular rates: 1) the goal of having one set of rates for the entire Ameren Illinois footprint; 2) consistency of delivery service rate classes; 3) rate mitigation; 4) ease of rate administration; 5) ease of customer understandability; 6) the

commoditized nature of today's energy markets; 7) assurance of BGS-DS rate synchronization; and 8) existing metering installations. Resp. Ex. 15.0, p.14.

b. Peak and Off-Peak Period definitions

In its original case the Ameren Companies recommended the use of the MISO on-peak and off-peak time periods in determining the forward prices that are used to serve as proxies to facilitate the results of the rate prism. See Resp. Ex. 5.0, p.21. In his direct testimony, Staff witness Lazare recommended that the Ameren Companies utilize the period from 10:00 am to 10:00 pm for the on-peak period, suggesting the MISO periods were too broad and not in accord with the timing of demands on the system. ICC Staff Ex. 6.0, p.13. In weighing both proposals, the Ameren Companies have agreed for purposes of this case to accept Mr. Lazare's proposed on-peak period of 10:00 am to 10:00 pm. Resp. Ex. 15.0, p.13.

3. Rider MV – Specification of Competitive Procurement Process

Rider MV outlines the Competitive Procurement Auction (CPA) process. Specifically it provides for an overview, a description of the general CPA process, matters pertaining to the CPA participants, a description of the CPA documents, a description of the credit requirements required to be met, as well as the CPA timeline. In effect, Rider MV, as it relates to the competitive procurement auction process, outlines the rules that must be followed by the Ameren Companies, suppliers, auction manager, and Staff.

4. Rider MV – Retail customer switching rules

By and large, all customers are required to follow the Ameren Company Direct Access Service Request (DASR) procedures. The switch becomes effective on the first scheduled meter reading date after proper notice is received, or an alternate date subject to non-standard switching rules. Resp. Ex. 5.0, p. 35. The switching rules intend to strike a reasonable balance in ensuring a retail competitive market but also seek to obtain the lowest possible price in the auction. Resp.

Ex. 5.0, p. 35. The switching rules are provided for in Rider MV. Resp. Ex. 5.1, Org. Sheet Nos. 27.030 – .033.

a. Enrollment window

i. Duration of window

The Ameren Companies propose a 30-day open enrollment period for customers interested in the BGS-LFP product to decide whether to take that product. The BGS-LFP product is the one-year fixed price product offered to customers with demands greater than 1 MW. CES recommended increasing the open enrollment period to 75 days. The Ameren Companies strongly oppose increasing the enrollment period, as increasing the enrollment window beyond 30 days means that price for the BGS-LFP product will unnecessarily increase.

The impact of increasing the open enrollment period will not be on the Ameren Companies, but instead to the customers that eventually take the BGS-LFP product. Mr. Blessing explained that increasing the window requires the BGS-LFP suppliers to hold their price open for an additional 45 days. This will increase the resulting auction price for the BGS-LFP product. The 30-day open enrollment period was a compromise between giving customers enough time to weigh their options and minimizing the risk premium associated with requiring the winning BGS-LFP suppliers to leave that price open during the 30-day period. Resp. Ex. 11, p. 29.

The determination that increasing the open enrollment period would increase the price for the BGS-LFP product is not limited to the Ameren Companies. CCG witness Michael Smith, representing a supplier interested in participation in the auction, testified that even the 30-day window would result in “generation supply rates for BGS-LFP customers [being] higher as supplier will likely price an auction premium into their bids to account for this optionality.” CCG Ex. 1.0, p.3. During cross examination Mr. Smith confirmed his expectation that the price

for this product would increase with the extended enrollment window. Tr. 750. This same viewpoint was expressed by other potential suppliers during The Ameren Companies' discussion of the procurement proposal with various stakeholders. Resp. Ex. 11.0, p.30.

Staff opposed the extended enrollment period as well. In support, Dr. Eric Schlaf performed an analysis using a model that assumed a daily volatility of annual forward contracts and a risk-free interest rate, to show that for each day above the 30-day enrollment period, there is an additional risk premium. ICC Staff Ex. 13.0, p.4. There was no challenge to the assumptions utilized by Dr. Schlaf. CES, for example, did not attempt to quantify the risk premium associated with the 75-day enrollment period. Tr. 207. Dr. Schlaf was also of the opinion that enlarging the enrollment window “. . . would very likely increase the auction clearing price . . .” and was very much aware that this would benefit ARES such as CES. ICC Staff Ex. 13.0, pp 2-3.

The IIEC members, who are very much interested in the BGS-LFP product, also testified at great length that extending the window as CES proposes, will mean an additional premium for this particular product. IIEC witness Robert Stephens testified that the extended window period would yield a premium on the price for the product. IIEC Ex. 4, pp. 12-13. Mr. Stephens added “. . . the very nature of extending that period for an additional period introduces an element of risk to them [suppliers], that risk being associated with such things as market fluctuation, during that time.” Tr. 58. He concluded the risk would result in an increase in auction prices. Tr. 58. Further, Mr. Stephens' colleagues independently examined the results put forth by Dr. Schlaf and confirmed the incremental price increase associated with the extension. Tr. 59.

The CES support for the 75-day window is not to the contrary. Notably, CES agreed that market prices will move during the time suppliers hold their bids open (Tr. 205) but they themselves would not hold a price for 75 days. Tr. 208.

Undoubtedly the CES will argue that the Ameren Companies did not provide any “quantitative” support for their concern that increasing the enrollment period from 30 days to 75 days would result in a higher clearing price for the BGS-LFP product. Dr. Schlaf’s model analysis undermines this contention. Nonetheless, the Ameren Companies supported their position with a qualitative analysis as explained by Ameren Companies witness Blessing in his surrebuttal testimony.

Mr. Blessing testified that suppliers had expressed concern that leaving bids open for extended periods would increase their risk, and that this optionality risk would be recovered by increased bid prices. Resp. Ex. 18.0, p. 27. If the wholesale market price increases during the extended open enrollment period, ARES may be less competitive relative to the BGS-LFP price, in which case more customers will stay with that product than the BGS-LFP suppliers had anticipated when making the bid. In this instance, the winning BGS-LFP supplier might be under-hedged and may need to require additional supplies at the now higher market prices. Conversely, if wholesale prices fall, the ARES are able to undercut the BGS-LFP product price and customers will take their product, and so the winning BGS-LFP supplier is now over-hedged and may need to sell off its excess supply at the now lower market price. Resp. Ex. 18.0, pp. 27-28.

The CES pretense for extending the enrollment period is largely to give customers more time to consider their options. CES Ex. 1.0, pp. 30-33. In response, the IIEC, who are actual customers who have considered third-party supply offers, made clear there is no need for the

additional time. IIEC Ex. 4.0, p. 12. Prices are not static – they move, and the customer and third party supplier can review terms and conditions of any proposed transaction prior to the enrollment period. Mr. Blessing explained that the customers have the ability to coordinate their request for proposals prior to the time that the BGS-LFP auction price is announced. For example, if the customer requires 90 days to develop and finalize its RFP, the customer can, well before the finalization of the BGS-LFP product price, initiate discussions with the ARES to review terms and conditions and other related considerations. Resp. Ex. 18.0, pp. 28-29.

In the end there is no justifiable basis for extending the enrollment period; its extension would only result in be unnecessary costs being paid by the customer.

ii. Opt in vs. opt out

Originally the Ameren Companies proposed that customers interested in the BGS-LFP product had to affirmatively opt in for this particular product.

Dr. Schlaf testified there may be Rider BGS-L customers who did not have any interest in moving from bundled service, but who would inadvertently be forced off that service because they failed to make an enrollment election. He further testified that “a customer’s failure to make the Rider BGS-L service election could result in the customer being placed on the real time service Rider RTP-L,” and recommended that Rider BGS-L service become the default service, rather than Rider RTP-L. That is, customers taking bundled service who do not make a different supply choice during the 30 day enrollment would remain on the bundled service and would be automatically transferred to the Rider BGS-L service. ICC Staff Ex. 5.0, pp. 7-8.

In weighing the various proposals, the Ameren Companies have agreed for purposes of this first auction to accept Dr. Schlaf’s recommendation. Resp. Ex. 15.0, pp. 21-22.

b. Other switching rule issues|

5. Rider MV – Limitations and Contingencies

Rider MV outlines the rules to be followed in the event the aggregate load to be served under the executed Supplier Forward Contracts resulting from the auction is less than needed to supply all the Ameren Companies' requirements. Resp. Ex. 4.1, Org. Sheet No. 27.025. In that event, the Ameren Companies will acquire the under-subscribed portion of the requirements through the MISO administered markets. In the event a supplier commits or is subjected to an event of default, Rider MV dictates that the Ameren Companies are to follow a stated protocol and depending on when the default takes place relative to the remaining term of the Supplier Forward Contract, acquire the supply from the MISO administered market through a Solicitation for Replacement Power, a form of a request for proposal process.

No party took issue with any of the terms and conditions associated with the Limitations and Contingencies portion of Rider MV.

6. Rider MV – Translation to retail charges

a. Customer Supply Group Migration Risk Factor

The CES witnesses recommended that a migration risk factor be calculated in Rider MV for the Ameren Companies. By this, they intend to add a surcharge to the eventual price to be paid by those customers likely to switch. Their premise is that suppliers will incorporate a risk premium of some amount because they, too, believe that some amount of customers will switch. CES Ex. 1.0, pp. 33-37. There are several reasons for opposing the CES recommendation.

First, it is undisputed that there has been little switching by customers in the Ameren Companies' service territories. Resp. Ex. 15.0, p. 19. Therefore, there is no justifiable basis on which to establish a migration risk premium for input into the rate prism. Any number that would be incorporated into the rate prism would be unsupportive and speculative.

Second, reliance on ComEd switching data, as CES does, is not useful. As Mr. Cooper explained during cross examination, there is no valid basis to believe that switching data in the ComEd service territory would necessarily apply to the Ameren Companies' service territories. He noted a number of material differences, including customer density, urban versus rural areas, commercial versus industrial, and the like, as bona fide reasons why switching in the ComEd service area is not a reliable metric for the Ameren Companies. Tr. 280-281.

Third, CES has not explained why the ComEd switching data is applicable to the Ameren Companies' service territories. They have made their assertions without offering any quantitative analysis.

Fourth, it should be understood that the Ameren Companies' resistance to a risk migration premium is for this case only. After the auction, and after there is some meaningful experience by which to consider or assess a risk migration premium because there has been switching, then such a charge can be incorporated into the rate prism.

Fifth, Staff witness Lazare agreed with the Ameren Companies' assessment in so far as there has been no valid determination that a migration risk factor is appropriate for the Ameren Companies rate prism. Moreover, if such a factor is appropriate, how should it be estimated? Mr. Lazare concludes that the CES witnesses "... provide no meaningful evidence to demonstrate that it is a significant cost to suppliers that should be factored in the equation." ICC Staff Ex. 14.0, pp. 8-9.

In conclusion, the Commission should reject CES' proposal for a risk migration premium.

b. Market cost information – Market Energy Costs

For purpose of translating the auction final clearing prices into Retail Supply Charges, forward prices will be used for each month corresponding to the period for which Retail Supply

Charges are being determined. Resp. Ex. 4.1, Org. Sheet No. 27.037-.039. These forward prices serve as proxies to help facilitate or illustrate the use of the rate prism. Resp. Ex. 5.0, p. 21.

Staff witness Lazare had originally proposed use of historical Locational Marginal Prices instead of the forward prices recommended by the Ameren Companies, but then agreed to the use of forward prices as input to the rate prism. ICC Staff Ex. 14.0, p. 6; Resp. Ex. 22.0, p. 6.

7. Rider MV – Supply Procurement Adjustment

The costs constituting the Supply Procurement Adjustment (“SPA”), listed in Rider MV, are directly or indirectly associated with the procuring and administering of the power supply procurement, and are not recovered by any other tariff or by any other means. Specifically, the SPA costs include professional fees, cost of engineering, supervision, insurance, payments for injury and damage awards, taxes, license, and any other administrative and general expenses not already included in the auction price for power, and not recovered from the supplier fee. The SPA would also include any capital and operating cost for generation resources incurred outside the power procurement process and any costs assigned to the power supply administration function. Resp. Ex. 4.1, Org. Sheet No. 27-048; Resp. Ex. 23.0, p.4.

Unlike the treatment of uncollectible expense, which the Ameren Companies agreed with Staff could be set as test year expenses in the utilities’ next delivery service rate cases, the Ameren Companies are adamant that the SPA costs should be tracked through Rider MV. For purposes of explanation, assume the SPA amount is \$1 million. The Ameren Companies’ proposal is that if the SPA costs fluctuate between delivery service rate cases, that there be an annual true-up to ensure that the \$1 million is collected. Mr. Mill explains that an annual true-up is needed with regard to the collection of the authorized level of SPA costs, in order to ensure that Ameren Companies are not in an over- or under-recovery situation. Otherwise, due to the level customer switching between RES service and utility bundled service, the SPA amount

would fluctuate—not because the utilities are incurring more or less costs, but because the kilowatt hours consumed (upon which the charge is set) will change. Resp. Ex. 23.0, p. 4; Tr. 225. The other factor that mandates the tracking of SPA costs in the MVAF is the change in customer consumption levels from month to month. It will always be the case that levels from month to month change. Tr. 226.

To be clear, the MVAF only tracks the actual SPA costs that have been found to be appropriate in the context of the utilities’ delivery service rate case. Whether SPA costs actually change between rate cases is irrelevant; the actual amount of SPA costs will not be recovered, but instead only the test year level.

The importance of recovering SPA costs was also highlighted by CES witnesses. CES Ex. 6.0, p. 15. The CES entities intend to compete against the prices that come out of the auction and they want to be sure the prices paid by customers reflect some recognition of the retail market price. The charges that are recovered in the SPA are similar to the types of charges the CES entities incur in selling retail power and energy to their customers. Because of the reality of customer switching, the “actual SPA costs” should be recovered, just as they would by any other supplier in the retail market.

8. Rider MV – Market Value Adjustment Factor

a. Accounting reconciliations

During the course of the proceedings, the Ameren Companies accepted a number of the Staff’s recommendations regarding provisions in Rider MV as well as provisions regarding the MVAF and CSF. They include the following:

- Agreed to modify the phrase used to represent costs in Rider MV setting forth the MVAF from “Payments that the Company makes to suppliers” to “expenses the Company incurs”;

- Included the wording of Term C in Rider MV in order to be consistent with Commonwealth Edison Company's Rider CPP;
- Agreed to include a Factor O to the MVAF and CSF formulas in Rider MV.

Resp. Ex. 16.0, pp. 5-6.

There were a few recommendations being made by Staff that the Ameren Companies did not accept. Staff recommended that the Remaining Balance Factor (RB Factor) for the MVAF and CSF should include a provision for interest. Including interest to the RB Factor would add additional complexity and cost to the administration, and unduly require additional recordkeeping and accounting measures. Mr. Mill noted there would be approximately 60 days between the time an MVAF or CSF is billed and the time when the resulting RB Factor is reflected in the subsequent MVAF or CSF charge. Resp. Ex. 16.0, p. 6. Staff agreed to withdraw its recommendation to include interest in the RB Factor in the MVAF formula, acknowledging that such an adjustment would not be material. Nonetheless, Staff continued to propose that interest be reflected in the CSF formula.

In response, the Ameren Companies recommend a better approach for reflecting the interest or carrying charges if the Ameren Companies are required to procure power under a contingency basis. Specifically, Mr. Mill explained that under the tariff, in the event of a supplier default which would require procuring contingency supplies, there would be determined a certain level of default damages. These default damages would be amortized over the remaining months of the defaulted supply contract. By way of example, assume that a supplier defaulted and the default damages were \$1 million. (These default damages would be the difference between what the Ameren Company is paying for contingency supply versus what it would have paid if the supplier had not defaulted). The Ameren Company collects the \$1 million as per the Supplier Forward Contract and that amount begins to accrue interest. Suppose

again the amount of time remaining was six months under the original supply contract; the accrued interest would be netted against the supplier damages to be recovered from customers over the period of time remaining under the original supply contract. The \$1 million would be divided by six months and the accrued interest as earned would be netted against each monthly amount to be recovered. This approach allows the default payment to more closely track the period for which the contingency costs are related and, therefore, ensures a better match between retail power prices and future power supply costs. Resp. Ex. 23.0, p. 8.

9. Rider MV – Subsequent review / Contingencies

In the context of the Stipulation and Agreement reached between the Ameren Companies and IIEC, the parties agreed, assuming the Commission approves a declining clock vertical tranche auction, to an annual formal review of the auction process through a docketed proceeding after the first and second auctions and thereafter, biennial formal reviews. The auction review process would provide the opportunity for filing of comments/testimony, responses to any comments/testimony, discovery, hearings on the comments/testimony filed, and briefs, and would be completed in time such that any material changes ordered as a result of the Commission's formal review of the auction process could be implemented in a timely manner prior to the next auction. Ameren/IIEC Joint Ex. 1.

The issue of whether or not there should be a formal annual review process, the form of such an annual review process, and its timeliness, was a matter of dispute between the Ameren Companies and IIEC. The parties contend that the compromise reached should be supported in its entirety by the Commission. In the event the Commission would reject the Stipulation and Agreement, specifically with regard to the requirement of a formal auction review, the Ameren Companies stand by the positions they took in testimony and other evidence in challenging the

appropriateness or need for a formal annual review process. Resp. Exs. 16.0, pp. 10-12; 23.0, pp. 10-11.

Finally, the Ameren Companies and IIEC agreed that if the Commission adopted the stipulation with regard to the annual and later biennial formal review process, the Commission need not adopt IIEC's recommendation for a three-year fixed price product for customers who loads are 1 MW or greater in these proceedings. Ameren/IIEC Joint Ex. 1.

10. Alternative proposals re interruptible service

As stated, in the course of the proceedings the Ameren Companies and IIEC reached a Stipulation and Agreement. Ameren/IIEC Joint Exhibit 1. As part of the agreement the Ameren Companies stated their willingness to adopt the IIEC "better alternative" recommendation as set forth in IIEC Exhibit 5, pages 7-9, whereby the Ameren Companies would offer an interruptible demand service for BGS-LRTP customers with demands of 5 MW or greater. The service offers a non-fixed price product by providing a choice of BGS-LRTP service or a combination of BGS-LRTP and MISO interruptible service to those customers who are required to be eligible for BGS-LRTP and who also meet the MISO interruptible demand requirements. The Ameren Companies agreed to file the necessary tariff by which to offer this service within 90 days after the entry of a final order, assuming all other conditions stated in the agreement have been met.

The Ameren Companies recommend that the Commission endorse the Stipulation and Agreement in full. In the event the Commission does not support the Stipulation and Agreement, or reject the Ameren Companies' provision of this interruptible service, the Ameren Companies then rely upon the arguments set forth in Respondent Exhibits 11.0, pp. 21-27; 18.0, pp. 19-24; 15.0, pp. 22-24; 22.0, pp. 18-19, as reasons and justification for opposing the IIEC recommendations regarding the provisions of other interruptible services or products. Notably,

no other party took an active interest in the matters in dispute between Ameren Companies and IIEC.

11. Other

Also as part of the Stipulation and Agreement reached between the Ameren Companies and IIEC, the Ameren Companies agreed to implement a cost-based demand charge in the fixed price rate design for whatever rate or tariff applies to a 3 MW and over customer by the third auction. These parties also reached agreement regarding other matters pertaining to the filing of the proposed demand charge design. Ameren/IIEC Joint Ex. 1.

The Ameren Companies urge the Commission to support in its entirety the Stipulation and Agreement, in particular the implementation of a cost-based demand charge in the fixed price rate design. In the event, though, the Commission would reject the Stipulation and Agreement or this particular aspect thereof, the Ameren Companies rely upon their testimony and evidence as set forth in Respondent Exhibits 15.0, pp. 17-18; 27.0, pp. 17-18 in addressing the IIEC's contention surrounding similar issues.

C. Additional tariff and rate design issues

1. Staff's rate increase mitigation proposal

In its direct case Staff witness Lazare proposed a rate mitigation or bill impact proposal. The proposal would limit the bill impact to residential customers by 20%, or 150% of the system average. ICC Staff Ex. 6.0, pp. 9-24. The bill impact proposal would apply to the bundled price to be paid by the customer. Importantly, it is Staff's intent that the bill impact proposal not deny the utility the right to recover fully and completely the purchased power cost.

As explained by Mr. Cooper, the Ameren Companies do not necessarily object to the bill impact proposal, subject again to assurance of full and complete cost recovery with regard to the purchased power cost. Even so, Mr. Cooper explained that the better time to consider in full a

rate mitigation or bill impact proposal would be the utilities' next delivery service rate cases, as Staff's bill impact proposal intends to apply to the *totality* of both the power supply costs and the delivery service costs. The Ameren Companies anticipate filing delivery service rate cases later this year where, as a consequence, delivery service charges will change. At a minimum, the yet to be determined delivery service revenue requirement will set the ceiling for recovery of the revenue requirements. This ceiling level will provide the Commission with additional guidance in terms of the need for, or the level of, any rate mitigation. Resp. Ex. 22.0, p. 3.

Mr. Lazare's response is that suppliers will still benefit today if they know the bill impact will work prior to the auction. ICC Staff Ex. 14.0, pp. 3-4. This is not necessarily true. They may know the mechanics, but that is all. The suppliers will not know the BGS or DS final costs – in effect the customer's bill. The suppliers will not be able to accurately assess how revenues will shift within the affected rate classes. Resp. Ex. 22.0, p. 3. Accordingly, if the Commission truly intends to consider a bill impact proposal, it stands to reason the Commission should know first what the "bill" is.

Even if the Commission considers and adopts the bill impact proposal in these proceedings, there is nothing to prevent any party, Staff, and even the Commission from considering a new or different bill impact proposal in the next delivery service rate cases. Thus, one has to question the timeliness of considering a bill impact proposal in these dockets. Resp. Ex. 22.0, p. 4.

2. Uniform BGS pricing across Ameren Footprint, regardless of rate mitigation proposal

As indicated above, the Ameren Companies do not object to the bill impact proposal in concept, but suggest consideration be delayed until the next delivery service rate cases. The Ameren Companies do object to the uniform application of the Staff proposal.

One of the stated goals for the Ameren Companies in this filing is to have uniform BGS pricing throughout the Ameren Illinois footprint. The Ameren Companies desire that each residential customer in the three separate utilities pay the same rate regardless of which Ameren Company is providing the commodity service. Resp. Ex. 15.0, p. 5. This is appropriate and justifiable because the power supply being procured for the residential customers will be at one price only, and not three different prices for the three different Ameren Companies. Yet, a pure application of Staff's proposal would result in shifting revenues among the three classes of customers that are taking the BGS service at issue (BGS-1, BGS-2 and BGS-3). By contrast, the Staff proposal for ComEd does not have this unintended consequence as there is only one utility – one set of residential customers. It is an absolute certainty that if the Staff proposal is accepted, the residential customers in the three different Ameren Company service territories will pay a different price for the same commodity, purchased at the same price, in the same wholesale market. Resp. Ex. 22.0, pp. 4-5.

The Commission should be prepared, if it rejects the Ameren Companies' modification, to explain in its order why the price for the same product, purchased at the same price in the same auction, will vary. The Commission has long embraced the goals of customer understandability and rate simplicity – this is not the time for these goals to be ignored. Finally, the Ameren Companies' modification does not offend the bill impact proposal in any significant way. Rate impacts can still be dampened. Resp. Ex. 22.0, pp. 4-5. The Staff proposal still works, even if not, perhaps, to the fullest extent intended.

3. Rider D – Default Supply Service Availability Charge

a. Description of Rider D

There is a disagreement between Ameren Companies and certain parties with regard to the applicability of Rider D-Default Supply Service Availability Charge. As will be explained

below, the Commission is called upon to make an affirmative decision as to whether it wants to test whether suppliers will be interested in bidding on Ameren Companies' real time price power supply. If Rider D is disallowed and the interest of suppliers bidding on this product wanes, then the Ameren Companies' customers eligible for RTP will be worse off.

Rider D is intended to be a charge applicable to all customers at or greater than 1 MW who opt for BGS-LRTP service (typically large customers), or third-party supply from a source other than the Ameren Companies. Given its nature, suppliers cannot know how many customers will actually take the product. They also cannot know or estimate the number of customers that may take the product because there is no historical basis. Resp. Ex. 22.0, p. 8. Staff agreed with this premise. Tr. 1386. Therefore, Rider D intends to set a proxy for the capacity planning costs these customers would impose on the BGS-LRTP suppliers. Rider D will produce a revenue stream to be returned to those suppliers who win the BGS-LRTP bid. Should it occur that no customers take the BGS-LRTP product or fewer than might have been anticipated (however that would be determined), the supplier knows it will more likely receive a revenue stream for at least holding the "option" that will be available to these particular customers.

Suppliers that bid on this load will have to reserve capacity or take the chance that when customers take the product, they will be able to acquire capacity in this market. If the supplier has reserved capacity, and nobody takes the product or not enough customers take the product commensurate with the amount of capacity reserved, the suppliers will lose money – it is that simple. Conversely, if there is no Rider D, and the supplier is successful in bidding on this product, it is a virtual certainty that the level of risk premium to compensate the suppliers for the unpredictability of the BGS-LRTP load will be higher. Resp. Ex. 22.0, p. 8.

The Ameren Companies are following the lead of New Jersey in this regard, and the success of New Jersey's auctions are well established. Recently the Rider D charged in New Jersey was discontinued as a separate charge for customers that would take this particular product. Instead, the bidders are remitted an amount equivalent to the application of the Rider D charge from a "retail adder" fund. In effect, the New Jersey Public Utility Commission is recognizing that the capacity option premium is a fundamental cost with regard to this particular product. Mr. Cooper concluded that the proposed \$0.015 per kilowatt hour charge, while it may not be the exact value needed to entice suppliers to bid on the BGS-LRTP product, has been correctly shown to bear a relationship to the minimum charge needed to entice suppliers to bid. Resp. Ex. 22.0, p. 11.

No parties have suggested that BGS-LRTP bidders will not experience a capacity cost associated with providing BGS-LRTP service to large customers. Rather, parties opposed to Rider D want the supplier, or the Ameren Companies if there are no BGS-LRTP suppliers, to bear the risk without any guarantee or certainty of recovery of some or all of these costs. Under no circumstances will the Ameren Companies bear responsibility for this charge, nor will they benefit from the application of Rider D. If there are no BGS-LRTP bidders and Ameren Companies are forced to go to the wholesale market to procure capacity, they will pass that cost along to those customers no matter the price and, in the event Rider D is approved, all dollars received by the Ameren Companies would be remitted to the successful bidders for the BGS-LRTP product. Resp. Ex. 22.0, p. 15.

b. Opposition to Rider D

The opposition to Rider D came from three sources-the Staff, CES and the IIEC. Of course, the CES has an incentive to take issue with Rider D in so far as it is their potential

customers who would bear this charge in the event they switch to third-party supply. The IIEC members would also bear this charge if they, too, were to take third-party supply or RTP.

The Staff opposition was that, first, there has been no demonstration that suppliers for this particular product will not participate in the auction; and, second, that the cost for this option is perhaps too high. ICC Staff Ex. 13.0, pp. 6-7. In reply, there has been no affirmation by any supplier that it would bid on this product, as was acknowledged by Dr. Schlaf. Tr. 1309–10. Nonetheless, this approach has been successfully used in New Jersey, where suppliers are bidding on this product, so the incentive would seem to be working there. In terms of the cost of the option, as shown by Mr. Cooper, it is nominal.

Mr. Cooper analyzed three different levels of supply prices and calculated the effect of the Rider D charge as a result. The results from this analysis showed that the Rider D charge represents less than ½ percent of the range of total power supply charges. This estimate excludes the delivery service cost which also appears on the customers' bill and so the overall bill impact, a matter of concern to the Staff, is even less than the charges shown in Mr. Cooper's surrebuttal testimony. Resp. Ex. 22.0, p. 10. It is worth noting that the customers who would pay this option are typically large customers with relatively large power bills.

CES characterizes the Rider D charge as being anti-competitive. CES Ex. 3.0, p. 13. Later, CES attempts to refute the charge as a form of insurance, as had been suggested by Mr. Cooper. CES Ex. 4.0, pp. 34-35. However, for the conclusory claim that the charge is anti-competitive, CES offers no credible explanation. The charge applies equally to all customers eligible for this product – customers who may at some point take the RTP product. With regard to the effort to refute the insurance analogy, Mr. Cooper more than adequately dismissed the CES rebuttal. Resp. Ex. 22, pp. 11-15.

IIEC's response, in part, is that the Ameren Companies have not identified suppliers who would not bid. IIEC Ex. 5, p. 9. Aside from the fact that no suppliers have stated they would bid irrespective of Rider D's availability, the Ameren Companies' must plan for all reasonable possibilities. For example, no supplier has said in these proceedings that they intend to specifically bid on the one-year fixed-price product (supported by IIEC), but still the Ameren Companies intend to seek bids for that load.

The Ameren Companies maintain, and Staff agrees (Tr. 1387), that with time the Ameren Companies and suppliers interested in bidding the BGS-LRTP product will have available to them historical information in terms of the number of customers taking the product at any given time. Therefore, it stands to reason that in time there will ultimately be greater certainty as to how much this load will be served.

In the end, the Commission should not reject the Rider D charge. It is a necessary element for ensuring the availability of a reasonably priced BGS-LRTP product. The Commission should not give way to arguments driven by parochial interests in deciding this particular issue.

4. "Default" BGS Rate for Large customers during Initial Open Enrollment Period, Company and Staff BGS-4, Coalition RTP

In its original filing, the Ameren Companies recommended that customers eligible for Rider BGS-L service be required to make an affirmative election during the enrollment period, indicating their intention to take that service. Dr. Schlaf recommended that the Rider BGS-L service become the default service, instead of the real time pricing service, Rider RTP-L, as originally proposed for customers currently on bundled service. ICC Staff Ex. 5.0, p. 7.

In rebuttal, the Ameren Companies agreed with Dr. Schlaf's recommendation. However, Rider RTP-L service is still the default service for customers that lose third-party supply. Resp. Ex. 15.0, p. 21.

5. Inclusion of non-residential rate risk or migration premium as a factor in rate prism for larger BGS-FP customers

6. Treatment of Uncollectibles

It was the original position of the Ameren Companies that uncollectible expenses associated with customers taking service under the BGS rates would be adjusted between the delivery service rate cases. The Staff recommended the level of the uncollectible expense be set in each delivery service rate case. ICC Staff Ex. 9.0, p. 7. The Ameren Companies agreed with Staff's proposal, that both the method as well as the test year expense level for uncollectible expense be determined in subsequent delivery service rate cases. Resp. Ex. 23.0, pp. 2-3.

7. Credit risk and other administrative costs

8. Integrated Distribution Company issues

CES recommended that the Ameren Companies on their own, or the Commission on its own initiative, open a docket for the purpose of reviewing any communication by and between the Ameren Companies and their customers. The stated reason for creating such a docket was to assure that the Ameren Companies were not violating the Integrated Distribution Company (IDC) rules, particularly those rules that prohibit an IDC from marketing, advertising or promoting their retail energy supply. CES Ex. 6.0, pp. 19-20.

Such an effort would be a profound waste of time and resources for the Ameren Companies, as well as for the Commission and its Staff. Mr. Mill repeatedly explained, utilities are always in communication with their customers. It is a necessary part of providing public utility service. It is ludicrous to pretend that a utility does not communicate or provide materials

to its customers. As Mr. Mill also explained, those personnel involved with customers are trained to understand the IDC rules and are fully aware of the prohibition against marketing, advertising and promoting the Ameren Companies' retail energy supply. Tr. 230-31, 233-34 and 236.

Second, while providing communication materials and communicating with customers is an everyday, ongoing effort, at what point in time would the docket suggested by CES prove meaningful, assuming any merit in the first instance? Essentially, CES means that the Commission would open up a docket, say on February 1, 2006, and whatever communication materials were in existence at that time would be made part of the record and the parties could debate on whether or not they are in violation of the IDC rules. Then, the docket comes to a close but the provision of materials communicating with customers continues.

Third, utility service is a heavily regulated industry. There are literally hundreds of rules in place at any given time that require compliance by the utility. The IDC rules are no different in this regard. It would be purposeless to engage in active litigation for each and every rule that requires some amount of utility compliance, as CES implies.

In summary, the CES proposal should be summarily rejected.

VIII. CONCLUSIONS AND MIXED LEGAL/FACTUAL ISSUES

A. Legality of Rider MV

See Section III.B.3, *supra*.

B. Issues concerning compliance of auction process details with Illinois law

See Section III, *supra*.

C. Other conclusions and mixed legal/factual issues

See Section III, *supra*.

IX. OTHER ISSUES

A. Renewable energy and energy efficiency issues (not already addressed above)

The Ameren Companies made clear their proposal can accommodate a renewable energy program. In the event the legislature would mandate renewable energy procurement, such procurement could be required of bidders in the BGS auction. Resp. Ex. 16.0, p. 16. However, since February, the Ameren Companies have actively participated in ICC sponsored meetings and have submitted proposals to voluntarily implement renewable energy and energy efficiency goals and initiatives. Our presentations to the working groups and to the ICC detail the benefits of keeping the renewables outside of the auction process, including the fact that the Ameren Companies can make long term commitments to renewable suppliers in sizable quantities, whereas bidders in the auction process likely cannot do that because of the generation supply contract terms. *Id.*

The Ameren Companies also believe that energy efficiency services should be procured separately from the BGS power procurement and that the BGS supply bidders will simply see the benefits of energy efficiency as reduced load.

In any event, no action by the Commission is necessary in this proceeding with respect to either renewables or energy efficiency.

B. Additional other issues

The Ameren Companies have no additional issues at this time, but reserve the right to respond to additional issues raised by other parties.

WHEREFORE, for all the reasons set forth above, the Ameren Companies respectfully request that the Commission approve their proposal to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV.

Dated: October 14, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Laura M. Earl, certify that on October 14, 2005, I served a copy of the foregoing Response to the Motion to Dismiss by electronic mail to the individuals on the Commission's official Service List for Dockets 05-0160, 05-0161, 05-0162.

/s/ Laura M. Earl

Laura M. Earl