

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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

**DRAFT ORDER OF THE AMEREN COMPANIES**

October 21, 2005

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## **I. EXECUTIVE SUMMARY / INTRODUCTION**

### **Procedural History**

On February 28, 2005, Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Power Company d/b/a Ameren CIPS and Illinois Power Company d/b/a AmerenIP filed Ill. C. C. No. 4, Original Sheet Nos. 244 through 303; 6th Revised Sheet No. 151.1; 8th Revised Sheet No. 151.13; and 7th Revised Sheet No. 151.14, (collectively, the "Procurement Tariffs" or the "Procurement Tariff Sheets"). This tariff filing embodied a proposal to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV. The tariff filing was accompanied by direct testimony and other Exhibits.

Notice of the proposed tariff changes was posted in the Ameren Companies' business offices and published in a secular newspaper of general circulation in the Ameren Companies' service area, as evidenced by publisher's certificates, in accordance with the requirements of Section 9-201(a) of the Public Utilities Act (the "Act"), 220 ILCS 5/9-201(a), and the provisions of 83 Ill. Adm. Code Part 255.

The Illinois Commerce Commission (the "Commission" or "ICC") issued a Suspension Order on March 9, 2005, suspending the Procurement Tariff Sheets to and including July 24, 2005, and opened dockets 05-0160, 05-0161, and 05-0162. Thereafter, the Commission issued a Resuspension Order on July 13, 2005, suspending the proposed tariffs to and including January 24, 2006.

Pursuant to notice duly given in accordance with the law and the rules and regulations of the Commission, a pre-hearing conference was held in this matter before the duly authorized Administrative Law Judge (the "ALJ") of the Commission, at its offices in Springfield, Illinois, on April 8, 2005. Ten days prior, notice of the prehearing conference had been provided by the Chief Clerk of the Commission to municipalities in the Ameren Companies' service area in accordance with the requirements of Section 10-108 of the Act, 220 ILCS 5/10-108. An additional hearing conference was held before the ALJ at the Commission's Springfield office on August 24, 2005.

Petitions to intervene were filed by Dynegy, Inc., the Illinois Industrial Energy Consumers ("IIEC"), the Citizens Utility Board ("CUB"), BlueStar Energy Services, Inc., the State of Illinois thru the Attorney General ("AG"), Midwest Generation EME, LLC, Constellation Energy Commodities Group, Inc. ("CCG"), Commonwealth Edison Company ("ComEd"), Midwest Independent Power Suppliers, Local Unions 15, 51 and 702 of the International Brotherhood of Electrical Workers ("IBEW"), Morgan Stanley Capital Group Inc., the Electric Power Supply Association, the Illinois Energy Association, Ameren Energy Marketing Company, J. Aron & Company, the Environmental Law and Policy Center ("ELPC"), and the entities comprising the Coalition of Energy Suppliers ("CES"), including U.S. Energy Savings Corporation ("USESC"), Constellation NewEnergy Inc., Direct Energy Services ("DES"), LLC, MidAmerican Energy Company, and Peoples Energy Services Corporation (collectively, all of the foregoing parties are the "Intervenors").

Evidentiary hearings were held on September 1, September 6-9, September 12-14, and September 20, 2005, at the offices of the Commission in Springfield, Illinois, in conjunction with hearings on similar tariffs that were filed by ComEd on February 28, 2005 in Docket No. 05-0159 (the "ComEd Docket"). At the evidentiary hearings, the Ameren Companies, the Staff of the Commission ("Staff"), the AG, CES, CUB, CCG, DES-USESC, Dynegy, IIEC, and Midwest Generation entered appearances and presented testimony, either by live witness(es) or by affidavit. Appearances were also entered for J. Aron, Morgan Stanley, Midwest Independent Power Suppliers, and Electric Power Supply Association, although they did not submit testimony. At the conclusion of the hearings, on September 20, 2005, the ALJ marked the record "Heard and Taken."

The following witnesses testified on behalf of the Ameren Companies: Warner L. Baxter, Executive Vice President and Chief Financial Office for Ameren Corporation; Craig D. Nelson, Vice President — Strategic Initiatives of Ameren Services Company and Vice President of AmerenCIPS; James C. Blessing, Managing Supervisor, Power Supply Acquisition in the Strategic Initiatives Department of Ameren Services Co.; Robert J. Mill, Director of the Regulatory Policy and Planning Department of Ameren Services Co.; Wilbon L. Cooper, Manager — Rate Engineering and Analysis — Regulatory Policy and Planning of Ameren Services Co.; Dr. Chantale Lacasse, Vice President with National Economic Research Associates, Inc. ("NERA"); Johannes P . Pfeifengerger, Principal and Director of The Brattle Group; Steven M. Fetter, President of Regulation UnFettered; Ronald R . McNamara; Vice President of Market Management and Chief Economist for the Midwest Independent Transmission System Operator, Inc.; Rodney Frame, Managing Principal of Analysis Group, Inc.; and Timothy I. Maloney, Managing Supervisor in the Credit Risk Management Department of Ameren Services Co.

The following witnesses testified on behalf of the Staff: David J. Salant, Principal, ERS Group, Adjunct Senior Research Scholar, Columbia Business School, Research Professor, Clemson University; David S. Sibley, John Michael Stuart Centennial Professor of Economics, the University of Texas at Austin; Scott A. Struck, CPA, Supervisor, Accounting Department, Financial Analysis Division; Richard J. Zuraski, Senior Economist, Policy Program, Energy Division; Serhan Ogur, Economic Analyst, Federal Energy Program, Energy Division; Eric P. Schlaf, Senior Economic Analyst, Energy Division; Peter Lazare, Senior Rate Analyst, Financial Analysis Division; Cheri L. Harden, Rate Analyst, Rate Department, Financial Analysis Division; Mary E. Selvaggio, CPA, Manager, Accounting Department, Financial Analysis Division; Steven R. Knepler, CPA, Supervisor, Accounting Department, Financial Analysis Division; and Rochelle Phipps, Senior Financial Analyst, Finance Department, Financial Analysis Division.

The AG's witnesses were Kenneth Rose, Ph.D, consultant, lecturer, Institute of Public Utilities, Michigan State University; Harvey Salgo, Esq., Principal Consultant, La Capra Associates; David Efron, CPA, Regulatory Consultant, Berkshire Consulting Services; and Philip Reny, Ph.D., Professor of Economics, the University of Chicago.

CCG's witness was Michael D. Smith, Vice President, Regulatory and Legislative Affairs.

CES's witnesses were Philip R. O'Connor, Ph.D., Vice President, Illinois Market, NewEnergy; Mario Bohorquez, Director of Supply, Illinois Market, NewEnergy, and Wayne Bollinger, Director of Energy Supply, People Energy Services (jointly); and John L. Domagalski, NewEnergy, and Richard S. Spilky, Director of Electric Products, MidAmerican (jointly).

CUB's witnesses were Robert M. Fagan, Senior Associate, Synapse Energy Economics, and William Steinhurst, Senior Consultant, Synapse Energy Economics, Inc.

DES-USESC's witness was James Steffes, Vice President, US Government & Regulatory Affairs and Chief Compliance Officer, DES.

Dynegy's witnesses were Barry Huddleston, Senior Director, Governmental and Regulatory Affairs; and Heather Dornbusch, Senior Analyst, Credit Risk Management.

IIEC submitted testimony of Robert R. Stephens, Consultant, Brubaker & Associates, Inc.; James R. Dauphinais, Consultant, Brubaker & Associates, Inc.; and Brian C. Collins, Consultant, Brubaker & Associates, Inc.

Midwest Generation submitted testimony of Frank C. Graves, Principal, The Brattle Group.

### **Testimony, Motions and Rulings**

On February 28, 2005, the Ameren Companies filed its direct testimony concurrently with its tariff filing. It presented direct testimony for each of its witnesses listed above, except Mr. Frame and Mr. Maloney (who each submitted only rebuttal and surrebuttal testimony).

On March 16, 2005, the Ameren Companies filed a Motion to Consolidate Dockets 050160, 05-0161 and 05-0162.

On March 23, 2005, the Ameren Companies filed a Motion for Entry of a Case Management Order requesting a pre-hearing conference and entry of a case management order.

Also on March 23, 2005, the Ameren Companies filed a Motion for a Protective Order, requesting a protective order be entered pursuant to 220 ILCS 5/4-404 and 83 Ill. Adm. Code § 200.430(a).

On March 29, 2005, Staff filed a Motion to Consolidate Dockets 05-0128, 05-0159, 05-0160, 05-0161, and 05-0162, pursuant to 83 Ill. Adm. Code § 200.600 (the "Motion to Consolidate").

On April 6, 2005, the Ameren Companies filed a response to the Motion to Consolidate, opposing Staff's Motion. The Ameren Companies argued that the tariff rates at issue in the two cases were distinct and that consolidation would prolong the proceedings. The Ameren Companies' response also noted that consolidation would prejudice the Ameren

Companies, ComEd and their customers. Therefore, the Ameren Companies urged coordination rather than consolidation.

Also on April 6, 2005, IIEC filed a response to the Motion to Consolidate in support of the Motion, and the AG, CUB, and ELPC filed a Motion on April 7, 2005 to file their response of no opposition Instantly.

On April 8, 2005, Staff filed a reply in support of the Motion to Consolidate.

On April 12, 2005, the ALJ denied the Motion to Consolidate.

On April 15, 2005, the AG, CUB, and ELPC jointly (the "Government, Consumer and Environmental Parties" or "GCE Parties"), along with IIEC, Staff, and Midwest Generation, filed their responses to the Motion for Protective Order. IIEC did not object to the Motion, and Staff recommended modifications to the language of the proposed protective order. The AG also filed a separate response.

Also on April 15, 2005, IIEC, Staff, Midwest Generation, and CES filed responses to the Motion for Case Management Order and Coordinated Schedule. IIEC, Staff, and CES argued for elongating the period for discovery.

Also on April 15, 2005, the GCE Parties filed a response to the Motion for Case Management Order, objecting to the parameters for data requests and the length of the discovery period.

On April 19, 2005, IIEC and Dynegy filed responses to Motion for Case Management Order and Coordinated Schedule.

On April 19, 2005, the Ameren Companies filed its reply in support of the Motion for Protective Order and the Motion for Case Management Order and Coordinated Schedule.

Also on April 19, 2005, the GCE Parties and Staff filed Replies to Responses to the Motions for a Case Management Order and Coordinated Schedule and for Entry of a Protective Order

On April 22, 2005, the ALJ issued a ruling, granting the Motion for Case Management Order, and enumerating procedures to govern the case. Concurrently, the ALJ set forth the Coordinated Schedule.

On April 26, 2005, the ALJ issued a ruling, granting the Motion for Protective Order.

On May 17, 2005, the AG, CUB, and ELPC filed a Motion to Dismiss the portion of the proceeding related to the Ameren Companies' Rider MV (the "Motion to Dismiss"), claiming that such Rider violates the consumer protections provisions in the Act reserving cost-based service to those commercial and industrial customers whose service has not been declared competitive, and asserting that the Act did not grant the

Commission authority to approve a competitive procurement process for customers whose service has not been declared competitive.

On May 25, 2005, Locals 15, 51, 702, IBEW filed a response supporting the Motion to Dismiss.

On May 25, 2005, the Ameren Companies and ComEd filed Oppositions to the Motion to Dismiss. The Ameren Companies noted that the movants mischaracterized market-based rates as being distinct from the utility's costs, failed to acknowledge that the Procurement Tariffs recovered the Ameren Companies' actual costs, and explained that the Commission's authority to approve the auction system is within its clear authority to approve cost recovery mechanisms under Articles IX and XVI of the Act.

Also on May 25, 2005, Staff filed a response opposing the Motion to Dismiss on the grounds that the Ameren Companies' filing provides sufficient information for the Commission to determine whether rates determined by the procurement process are just and reasonable. Staff further pointed out that the movants erroneously extended language in the Act limited to residential and small commercial retail customers to all customers, thereby misapplying the Act's customer protection requirements.

Also on May 25, 2005, Midwest Generation and CES filed responses to the Motion to Dismiss, opposing the Motion. On May 26, 2005 Midwest Independent Power Suppliers and Electric Power Supply Association filed responses to the Motion to Dismiss, opposing the Motion.

On May 31, 2005, the Ameren Companies filed a reply opposing IBEW's response to the Motion to Dismiss.

On June 1, 2005, the AG, CUB, and ELPC filed a reply in support of the Motion to Dismiss, arguing that the Ameren Companies' proposal does not allow the Commission an opportunity to review the costs for fairness and reasonability and forces market-based rates on customers whose service has not been determined competitive.

Also on June 1, 2005, the ALJ issued a Ruling denying the Motion to Dismiss. In the Ruling, the ALJ found that market-based prices like those proposed in the Procurement Tariffs are one method a utility determines costs, and are not a mutually-exclusive replacement for cost-based rates.

On June 15, 2005, Staff and Intervenors filed direct testimony for all of their respective witnesses listed above, except Mr. Efron, Mr. Reny, and Ms. Phipps (each of whom submitted rebuttal testimony).

On June 22, 2005, the AG, CCSAO, CUB, and ELPC filed a Petition for Interlocutory Review of the ALJ's Ruling denying the Motion to Dismiss (the "Petition for Interlocutory Review"), arguing that the Ruling misinterpreted Section 16-103(c) of the Act and that market-based pricing is not reflective of costs where they are set in a less than fully competitive market.

On June 28, 2005, the Commission, on its own motion, ordered that an oral argument on the Petition for Interlocutory Review be held on July 5, 2005.

On June 29, 2005, the Ameren Companies, ComEd and Midwest Generation filed their responses to the Petition for Interlocutory Review, opposing the Petition. On June 29, 2005, IBEW filed their response in support of the Petition for Interlocutory Review. Also on June 29, 2005, the AG filed a Motion to Reschedule and Clarify Scope of Oral Argument, seeking a later date for the argument and to confine the argument to the issue whether the Act grants the Commission authority to approve market-based rates for customers whose service is not declared competitive.

On June 30, 2005, IBEW filed a response to the Motion to Reschedule and Clarify Scope of Oral Argument.

On July 1, 2005 the Commission denied the Motion to Reschedule and Clarify Scope of Oral Argument by the AG.

On July 5, 2005, the Commission held oral argument on the Petition for Interlocutory Review.

On July 13, 2005 the Ameren Companies filed rebuttal testimony for witnesses Nelson, Blessing, LaCasse, Frame, Maloney, Cooper and Mill.

On July 15, 2005, the Commission denied the Petition for Interlocutory Review.

On August 10, 2005, the Staff and Intervenors filed rebuttal testimony.

On August 29, 2005, the Ameren Companies filed its surrebuttal testimony for witnesses Nelson, Blessing, LaCasse, Frame, Maloney, Cooper and Mill.

On September 6, 2005, the AG, CCSAO, CUB, and ELPC filed a Motion in Limine to Exclude Testimony Regarding the Post 2006 Workshops ("Motion to Exclude").

On September 9, 2005, ComEd filed a response to the Motion to Exclude.

On September 12, 2005, the Ameren Companies, Staff and CES filed responses in opposition to Motion to Exclude.

On September 20, 2005, during a hearing, the ALJ issued a schedule for post-hearing briefs and party-proposed draft orders. On September 26, 2005, the Ameren Companies filed an outline for the post-hearing briefs. On September 28, 2005, Staff filed motions to amend the brief outline.

On September 29, 2005, the ALJ issued a Ruling denying the Motion to Exclude.

On October 14, 2005, initial post-hearing briefs were submitted respectively by the Ameren Companies, Staff, the AG, CUB, IIEC, Morgan Stanley, CES, CCG, DES-USESC, Dynegy, and Midwest Generation.

On October 21, 2005, the Ameren Companies filed their proposed order.

On October 27, 2005, the Ameren Companies, \_\_\_\_\_, filed their respective post-hearing reply briefs.

On \_\_\_\_\_, 2005, the ALJ served a proposed order on the parties. Briefs on exceptions were filed by on \_\_\_\_\_ 2005, respectively. Reply briefs on exceptions were filed by \_\_\_\_\_ on \_\_\_\_\_, 2005. All exceptions and replies to exceptions have been duly considered by the Commission.

### **The Competitive Procurement Auction**

In this docket, the Commission is reviewing retail tariffs embodying the Competitive Procurement Auction ("CPA" or "Proposal"), the process that the Ameren Companies has proposed for procuring power and energy after 2006, and which the Ameren Companies' witnesses testified was consistent with the results of the Commission's Post-2006 Initiative.

As described in more detail below in this Order, the CPA involves a "vertical tranche," full requirements, descending clock auction, in which potential suppliers vie for fixed percentage shares of the responsibility to provide electricity to meet the needs of the Ameren Companies' retail customers. Under this Proposal, customers are charged for the electricity the Ameren Companies acquires at the Ameren Companies' cost, without markup or profit for the Ameren Companies.

A chart is attached as Exhibit 1, which details the features of the proposed CPA and comparing the CPA with ComEd's similar Illinois Auction Proposal (under consideration in ICC docket 05-0159) and the auction currently used in New Jersey.

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

As authorized by the Act and orders of the Commission, the Ameren Companies divested all of its generation assets. Because the Ameren Companies owns no generating assets of its own, it must purchase the power and energy necessary to serve its customers at wholesale. the Ameren Companies currently handles this purchasing through a contract with Exelon Generation LLC ("ExGen"). At the end of 2006, however, as the Commission has recognized, this power supply arrangement will end. the Ameren Companies will thereafter need to purchase power and energy in the wholesale market.

In the interests of customers and all parties in these circumstances, the Commission needs to approve tariffs embodying a procurement methodology that both secures reliable supply and results in reasonable and stable retail prices in the post-transition period in accordance with the intent of the Illinois Electric Service Customer Choice and Rate Relief Law of 1997, 220 ILCS 5/16-101 et seq. (the "1997 Law" or the "1997 Restructuring Law"). To meet that requirement, the Ameren Companies has filed tariffs embodying the CPA.

The record before the Commission is lengthy and reflects an exhaustive analysis of the issues for decision regarding the tariffs and the CPA. Among other things, that analysis covers the features of the auction process and the improvements that have been considered and incorporated as a result of suggestions from the parties. The Commission has before it everything that is necessary to conclude that the auction proposal is just and reasonable. Given that record, the Commission approves the Ameren Companies' proposal, with modifications identified herein, based on the record and for the reasons stated in this Order.

### III. LEGAL ISSUES

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

The General Assembly began a process of transforming the electric services industry in Illinois through the passage of the 1997 Restructuring Law, 220 ILCS 5/16-101 et seq. The 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." 220 ILCS 5/16-101A(b). As a result of these changes, the 1997 Law provides 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." *Id.*

During the mandatory transition period, tariffed electricity rates for traditional bundled customers have been frozen — and for the Ameren Companies' residential customers, have been frozen with a 20% reduction in rates in two steps from the approved rates in force prior to passage of the 1997 Law. The rate freeze and transition period, however, are drawing to a close, and the 1997 Law contemplated that new tariff filings would be made to set rates during the post-transition period.

As part of the transition to competitive markets for electricity in Illinois, the 1997 Law specifically authorized electric utilities to reorganize their businesses and to divest generation assets (the plants that generate electricity) with defined, but limited, Commission oversight of those transactions. *Id.* at § 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 General Assembly chose to authorize Commission disapproval of such asset divestiture only if the Commission found that the transaction would render the utility unable to provide safe and reliable service, or would result in a strong likelihood that the utility could seek a base rate increase during the mandatory transition period. 220 ILCS 5/16-111(g)(4).

The 1997 Law further provides that, once the Commission approves a utility's sale or transfer of its generation assets, "[t]he Commission shall not in any subsequent proceeding or otherwise, review such a reorganization or other transaction authorized by this Section." *Id.* Rather, Section 16-111(i) explicitly directs that, after the mandatory transition period, "the Commission, in any proceeding to establish rates and charges for tariffed services offered by an electric utility, shall consider only ... the then current or

projected revenues, costs, investments and cost of capital directly or indirectly associated with the provision of such tariffed services...." *Id.* at § 16-111(i) (emphasis added).

Although the 1997 Law encouraged the separation of the electric generation function from the distribution function, it requires distribution companies to continue to provide "bundled" electric service to customers who do not yet have sufficient choice in their retail provider of electricity. A distribution company such as the Ameren Companies must therefore acquire electricity in order to meet their ongoing mandatory service obligations. Since the Ameren Companies is acquiring this electricity for resale to its retail customers, its acquisition is a wholesale transaction.

Whether a utility generates power or purchases it, the retail rates it charges must be reasonable and prudent. And whether retail rates, in hindsight, would be lower based on the reasonable and prudent costs of acquiring power at market prices, or based on the reasonable and prudent costs of operating self-owned generation facilities, depends on a host of changing factors and market conditions. The virtually universal assumption that existed in 1997 and that remains widely held today, however, is that over time rates based on market prices will be lower than rates based on the historical, captive costs of a utility's construction, operation, and maintenance of its own generation assets.

Indeed, the 1997 Law itself reflects such a conclusion in the statute's strong affirmative incentives for divestiture. Section 16-111(i) of the Law provides that, after the statute's "transition period," and before a tariffed service is declared "competitive," the Commission "may establish" a utility's charges for the electric power and energy component of tariffed services "at a rate equal to the market value [for such electric power and energy] plus 10%." 220 ILCS 5/16-111(i). This provision puts a utility at risk of being limited to recovering no more than market value plus 10%, no matter how efficient or prudent the utility's operation of its own generation assets might be.

In accordance with the authority provided by Section 16-111(g), the Ameren Companies fully divested its remaining generation assets (some plants had been sold previously, pursuant to Commission authorization under prior law), selling some and transferring others to an affiliated entity. This Commission recognized at the time that, as a result of the divestitures, "subsequent to 2006, [the Ameren Companies] would obtain all of its supply from market forces." *In re Commonwealth Edison Co., Proceeding Pursuant to Section 16-111(g)*, 2000 III. PUC LEXIS 667 at \*6 (Aug. 17, 2000).

## **ICC Authority Under Article IX and Article XVI to Approve the Filed Tariffs**

### **The Regulatory Framework in Illinois Regarding Utility Costs**

The Ameren Companies' competitive procurement tariff proposes a method of setting retail rates based on the Ameren Companies' cost of obtaining, in the wholesale market, electricity required to meet the Ameren Companies' mandatory service obligations. Some parties to these proceedings argue that the Commission lacks authority in the first instance to approve such a tariff. Before turning to the specifics of those contentions, it is

important to set forth certain fundamentals governing the Commission's authority to set rates.

Despite the significant transformation of the electric services industry in Illinois brought about by the 1997 Law, the essential principles of Illinois law governing ratesetting for a utility with mandatory service obligations have remained unchanged for almost 100 years.

First, it is well-settled that under the Public Utilities Act the Commission enjoys broad, "plenary power" regarding "the supervision of public utilities, including the power to establish reasonable rates and charges for service." *Abbott Labs, Inc. v. ICC*, 289 Ill. App. 3d 705, 786 (1997) (citations omitted); See 220 ILCS 5/4-101 (supervisory power over public utilities); *id.* 5/9-101 (just and reasonable rates). The Act does not dictate how the Commission should make the determination of whether a rate is just and reasonable and, indeed, it is firmly established that this body has wide latitude in establishing "preferable techniques in utility regulation." *City of Chicago v. Ill. Commerce Comm'n*, 13 Ill. 2d 607, 618 (1958).

Second, also pursuant to long-settled statutory authority, an electric utility is entitled to recover its prudently incurred costs. The Public Utility Act expressly provides that utility service prices are to "accurately reflect the long-term cost of such services" and "tariff rates for the sale of various public utility services [are to] ... accurately reflect the cost of delivering those services and allow utilities to recover the total costs prudently and reasonably incurred." 220 ILCS 5/1-102. Consistent with this expression of legislative intent, Article IX of the Act requires that utility rates be "just and reasonable." 220 ILCS 5/9-101. This requirement, which "has remained unchanged since the [Public Utilities Act] of 1913," means that rates "should be sufficient to provide for operating expenses, depreciation, reserves ... and a reasonable return to the investor." *Illinois Bell Tel. Co. v. ICC*, 414 Ill. 275, 286-88 (1953). Rates "must allow the utility to recover costs prudently and reasonably incurred." *Citizens Util. Bd. v. ICC*, 166 Ill. 2d 111, 121 (1995). In this respect, the law does not distinguish between costs of products a utility purchases in a market versus those which it acquires in some other way.

Indeed, if the Act did not authorize recovery of prudently incurred costs, the statute would raise substantial constitutional concerns. As the Illinois Supreme Court has explained: "The power of the Legislature over rates to be charged is not absolute, but is limited. It is the power to regulate and not to confiscate." *City of Edwardsville v. Ill. Bell Tel. Co.*, 310 Ill. 618, 621 (1924). "The state has no power to compel a corporation engaged in operating a public utility to serve the public without a reasonable compensation." *Id.*; see also *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 309-10 (1989); *Mich. Bell Tel. Co. v. Engler*, 257 F.3d 587, 594 (6th Cir. 2001).

Because the Ameren Companies has divested its electric generating facilities, the make-up of the company's costs has changed. The cost of the energy supplied to customers no longer reflects the Ameren Companies' historical and current operating costs of maintaining its own generating facilities but, instead, reflects the cost of purchasing this energy in wholesale power transactions. The same principles, however, apply: a public

utility like the Ameren Companies is entitled to recover the actual, out-of-pocket costs to supply electricity to its customers so long as those costs are reasonably and prudently incurred. Whether power procurement costs under the proposed tariff in fact would be reasonably and prudently incurred is discussed elsewhere in this Order.

### **ICC Authority Under Article IX**

Rider MV proposes a mechanism for setting retail rates based on the competitive procurement of wholesale power and energy and formulae that provides for recovery of those costs from retail customers with no markup. The conduct of the auction process proposed is beyond the control of the utility and would be fully monitored by the Commission. Once the auction is completed, an independent auction manager must submit a formal report to the Commission summarizing what occurred at the auction. The Commission will also receive information about the auction process and the operation of the auction for its Staff during the process leading up to the auction. The Commission's Staff also must submit a report to the Commission regarding the auction. *Id.* The Commission then has the opportunity to review the auction and its results and, if it determines necessary, reject the results by initiating an investigation or other formal proceeding. If not rejected, retail rates will be set by pre-determined formulae based on the auction results. The Commission also retains its authority to initiate an investigation into the rate at any time and any aggrieved party may file a complaint if the rate is unjust and unreasonable. 220 ILCS 5/9-250.

Both the Commission and Illinois courts long have held that, among the techniques that may be used to establish the justness and reasonableness of utility rates, the Commission has the authority to approve formula-type rates, particularly for costs that fluctuate. Thus, in 1958, the Illinois Supreme Court upheld this agency's authority to permit a utility to automatically increase its rates to recover the costs of wholesale power purchases pursuant to an approved "mathematical formula." *City of Chicago*, 13 Ill. 2d at 611-13.<sup>1</sup> In upholding this rate setting method, the Court explicitly recognized that "it is clear that the statutory authority to approve rate schedules embraces more than the authority to approve rates fixed in terms of dollars and cents," as is done in a general ratemaking case. *Id.* The Court found it sufficient that the Commission retained its power to initiate a proceeding to investigate the reasonableness of the utility's rates — a statutory power that remains intact under Rider MV — Competitive Procurement Process. *Id.* at 617; see 220 ILCS 5/9-250. Quoting its earlier decision in *Antioch Milling Co. v. Pub. Serv. Co.*, 4 Ill. 2d 200, 210 (1954), the Court also emphasized that "[t]he act provides that rates shall be reasonable; but it entrusts the enforcement of that obligation in the first instance to the commission." *City of Chicago*, 13 Ill. 2d at 618 (internal quotation marks and citation omitted).

More recently, the Supreme Court agreed with the Commission that, in the case of "unexpected, volatile or fluctuating expenses," an adjustment mechanism provides a

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<sup>1</sup> The Supreme Court first upheld the automatic rate adjustment mechanism independent of any specific statutory authorization, under the Commission's general Article IX authority. See *City of Chicago*, 13 Ill. 2d at 611-13. The General Assembly subsequently enacted specific provisions governing fuel adjustment clauses.

more "accurate and efficient" means than a general rate case for tracking costs and matching them with rates. *Citizens Util. Bd. v. Ill. Commerce Comm'n*, 166 Ill. 2d 111, 139 (1995). Such mechanisms simply provide for cost recovery and do not affect the utility's fair rate of return. See *City of Chicago v. Ill. Commerce Comm'n*, 281 Ill. App. 3d 617, 628 (1st Dist. 1996).<sup>2</sup>

Of course, the Commission "may not approve a tariff which permits a utility to set its own rates." *Citizens Util. Bd. v. Ill. Commerce Comm'n*, 275 Ill. App. 3d 329, 340 (1st Dist. 1995). The measure of costs, and the utility's rates, must be outside the control of the utility. Rider MV clearly meets this test. The process and formulae are both well defined and outside the utility's control.

Some parties -- the Attorney General, on behalf of the People of Illinois and the Citizens Utility Board -- nonetheless contend that the Commission may not approve the procurement tariff because the specific rates to be charged customers cannot be known in advance of the auction. Thus, the Attorney General maintains that the tariff calls for an unlawful "blank rate." AG Init. Br. at 13; see also CUB Init. Br. at 9-12. These parties all rely on *Citizens Utility Board v. ICC*, 275 Ill. App. 3d 329, 655 N.E. 2d 961 (1st Dist. 1995) to support this view.

*Citizens Utility Board*, however, involved a fundamentally different situation. In that case, the utility proposed a tariff in which it would offer "discounted rates" to certain non-residential customers "vis-a-vis negotiated contracts." *Citizens Utility Board*, 275 Ill. App. 3d at 332. The only parameter governing the rates to be set by contract was that those rates would not be below the utility's marginal cost or, as the court put it, "any rate [the utility] eventually chooses provided the company does not, in laymen's terms, lose money." *Id.* at 339 (emphasis added). The court contrasted that situation with a rate that "truly contains a `parameter of rates,' such as where rates are set by "a mathematical formula under which rates would fluctuate with the wholesale cost of natural gas," and which is permissible under the Act. *Id.* at 339-40.

Under the Ameren Companies' proposal in the instant case, and unlike the situation in *Citizens Utility Board*, the utility does not enjoy unfettered discretion to set rates. Rather, the utility has proposed both a specific procurement process and a specific mathematical formula for converting the cost of power procured at auction into rates. the Ameren Companies enjoys no ability under its tariff to deviate either from the procurement process it has proposed nor from the ratesetting formula.<sup>3</sup> Both the procurement process

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<sup>2</sup> Such mechanisms have not been limited to fuel purchases. See *Citizens Util. Bd.*, 166 Ill. 2d at 133 (upholding recovery of "coal tar clean up expenditures" through a flexible "rider" mechanism, which the Court described as a mechanism that could "increase a rate, allowing the utility to recover the cost as it is incurred, alleviating the delay of waiting until the utility files a general rate case to recover expenses"); *City of Chicago*, 281 Ill. App. 3d at 627-28 (upholding rider recovery of utility municipal franchise fees); *In re Ill. Power Co.*, No. 04-0294, 2004 WL 2208508, at \*47 (Ill. Commerce Comm'n Sept. 22, 2004) (approving automatic adjustment clause for 90% of asbestos litigation costs).

<sup>3</sup> CUB points to certain decisions which it claims are entirely committed to the Ameren Companies' discretion and which therefore allegedly render this situation akin to the one in *Citizens Utility Board*. See CUB Init. Br. at 8-10. This claim is not supported by the record. All of these decisions, e.g., bidder qualifications, the setting of a load cap, or maximum and minimum bidding prices, are matters as to which

and the cost recovery formula to be used are being subjected to extensive and public scrutiny in these proceedings. The rates as calculated by formula will be publicly available.<sup>4</sup>

Thus, the cost recovery mechanism in Rider MV is fully consistent with the principles set forth by the Illinois Supreme Court in *City of Chicago* and related cases, and the reliance upon *Citizens Utility Board* by the Attorney General and others is misplaced. Under long-standing regulatory principles, the Commission has authority to approve a mechanism by which the Ameren Companies will incur, and recover, the actual costs the utility will incur to fulfill its mandatory service obligations. There is nothing in the Act that prohibits the Commission from establishing that mechanism in advance, as it previously has done in analogous situations. Therefore, the agency enjoys authority to approve the tariff under Article IX of the Act.

### **ICC Authority Under Article XVI**

In addition to the Commission's authority under Article IX, express authority to approve Rider MV is also provided by Section 16-111(i) of the Act. That provision directly addresses how this agency must evaluate rates in the context presented here, i.e., after the mandatory transition period but before a tariffed service is declared competitive. Section 16-111(i) directs:

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 the tariffed service 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) (emphasis added).

In addition, Section 16-111(i) permits the Commission to "establish such electric power and energy component at a rate equal to the market value plus 10%." *Id.* In other words, the Act explicitly recognizes that, prior to the time a service is declared competitive, charges for the electric power and energy component of the service may be measured by that component's "market value." Thus, Section 16-111(i) implements the longstanding Article IX "just and reasonable" rates requirement, 220 ILCS 5/9-101, in the context of the electricity services restructuring envisioned by the 1997 Law, by expressly allowing the Commission to make market value a reference point for the justness and

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the Ameren Companies' tariff proposes a specific approach which is itself subject to Commission approval. In none of these matters does the Ameren Companies propose that it retain unfettered discretion.

<sup>4</sup> The *Citizens Utility Board* decision also found the tariff at issue therein to be unauthorized because it allowed the utility to keep the negotiated rates confidential, so that the public would never be able to enforce its statutory right to inspect utility rates. 275 Ill. App. 3d at 341. That holding has no application here.

reasonableness of charges for the electric power and energy component of tariffed services.

Rider MV comports with the specific authorization provided by Sections 16-111(i) and 16-112(a) to base rates for the electric power and energy component of tariffed service on the market value of that energy. "Market value" as used in Section 16-111(i) is defined in Section 16-112. That provision, in turn, broadly establishes that the Commission may determine "market value" pursuant to a "tariff 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." 220 ILCS 5/16-112(a) (emphasis added). A competitive auction process fits within the statutory criteria for establishing the "market value" for electric power and energy under Section 16-112(a).<sup>5</sup>

The parties contending that the Commission lacks authority to approve the procurement tariff do not, in the main, address the authority provided by Article XVI.

Section 16-112(a) directs that "market value" can be determined by use of a broad variety of measures and proxies (such as through use of a range of index measures). The procurement method embodied in Rider MV – an auction for the resources required to provide the very product to be used by retail customers -- produces a direct and precise assessment of market value, as called for by the Act. Moreover, it would be illogical for the statute to authorize the use of a more generalized proxy for market value but prohibit the most objective, fair and classic determinant of market value — a competitive auction that results in an index price for the very product being valued. One "should start with the assumption that the legislature intended to enact an effective law" and should "interpret [a] statute... as to give it efficient operation and effect as a whole." *Pliakos v. Ill. Liquor Control Comm'n*, 11 Ill. 2d 456, 460 (1957); see also *Village of Lake Villa v. Branley*, 348 Ill. App.3d 280, 284 (2d Dist. 2004) ("The primary purpose of statutory construction is to determine and give effect to the legislature's intent, while presuming the legislature did not intend to create absurd, inconvenient, or unjust results."). And in doing so, one should not strain to impose a narrow, unduly literal interpretation never intended by the legislature. *City of Champaign v. Hill*, 29 Ill. App. 2d 429, 444 (3d Dist. 1961); *Krome v. Halbert*, 263 Ill. 172 (1914); *California v. United States*, 320 U.S. 577, 585 (1944).<sup>6</sup> The fact that the word "auction" does not appear in Section 16-112(a) in no way precludes approval of the tariff.

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<sup>5</sup> An auction by definition constitutes a "market." An "auction market" is "[a]n organized market in which prices adjust continuously in respect to shifts in supply and demand" and can be considered "the text-book model for competitive supply." MIT Dictionary of Modern Economics, at 20 (4th ed. 1992). The contracts resulting from the auction constitute "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." 220 ILCS 5/16-112(a). These contracts are directly "applicable" to the utility's retail market within the meaning of the statute: Under the tariff, the utility's actual bundled retail electricity load obligation is divided into discrete segments, and the lowest bidder for a given segment is selected for the contract.

<sup>6</sup> The Commission has stated elsewhere that the market value in Section 16-112 is a retail market value. See *In re Commonwealth Edison Co.*, 2001 Ill. PUC LEXIS 419, at \*418 (Ill. Commerce Comm'n

For these reasons, the Commission has authority under Article XVI, independent of its authority under Article IX, to approve the procurement tariff.

**Rider MV Is Not Prohibited by Section 16-103(c).**

The Attorney General, joined by the Citizens Utility Board, continues to press the argument made in its motion to dismiss these proceedings that the Commission lacks authority to approve Rider MV on the grounds that the tariff is prohibited by Section 16-103(c) of the Act. Those arguments were already examined and rejected in the decision denying the motion to dismiss, which decision the Commission affirmed when it denied interlocutory review. Nothing in the post-hearing briefs warrants revisiting the earlier decision that Section 16-103(c) does not preclude the Commission from approving the procurement tariff.

The Attorney General maintains that, until a retail electric service is declared competitive for a customer class, Section 16-103(c) of the Act requires that customers continue to receive "just and reasonable" rates "based on the actual cost of providing service -- and no more," AG Init. Br. at 10, and that these customers cannot be charged "market based rates," *id.* at 9. Moreover, because Section 16-103(c) defines "market based prices" to include "the electric utility's cost of obtaining the electric power and energy at wholesale through a competitive bidding or other arms-length acquisition process," 220 ILCS 5/16-103(c) (emphasis added), the Attorney General effectively contends that, until a service is declared competitive, customers cannot be charged for electricity obtained through a competitive or other arms-length acquisition process.

At its most fundamental, however, this argument appears to confuse retail and wholesale markets. The auction proposal is a wholesale auction, whereby the Ameren Companies will purchase electric energy at wholesale from third party suppliers to serve its retail load. It is not a retail auction. the Ameren Companies will be charging its retail customers its actual costs of procuring power at wholesale. the Ameren Companies will not be charging its retail customers market-based rates. Thus, the Attorney General would read Section 16-103(c) to mean that a utility like the Ameren Companies that owns no generation facilities of its own could not charge customers, prior to a competitive declaration, the costs of wholesale electricity acquired through a competitive process.

It is also worth noting that this position contradicts the consensus conclusion reached in the Commission's "Post 2006" Initiative. Beginning in early 2004, the Commission conducted a collaborative process to address issues regarding the Act's "post-transition" period commencing January 1, 2007. Those issues included how utilities should procure energy after the transition period ends. All interested stakeholders, including each of the parties now advancing the Section 16-103(c) argument, participated in that process through several open working groups, including one focused specifically on procurement. The declared consensus of all stakeholders in the Procurement Working Group was that "the ideal procurement method" for utilities that had divested their generation assets

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Apr. 11, 2001). However, the Commission has also recognized that "the wholesale market ... appears to offer the best source of data currently available." *Id.* at \*419-

should, among other criteria, "allow for a competitive procurement approach," "provide for the opportunity for full cost recovery to the utilities if they follow the Commission approved procurement approach" and "result in market-based rates for customers." See The Post 2006 Initiative: Final Staff Report to the Commission, at 6 (Dec. 2, 2004) ("Post 2006 Report") (emphasis added). Thus, the parties relying on Section 16-103(c) now ask the Commission to declare unlawful precisely what the Procurement Working Group recommended to the Commission as consensus items. *Id.*

In any event, as discussed in the decision denying the motion to dismiss, the contentions made regarding Section 16-103(c) do not withstand scrutiny of that provision's text and purpose.

Section 16-103(c) provides in full:

Notwithstanding any other provision of this Article, each electric utility shall continue offering to all residential customers and to all small commercial retail customers in its service area, as a tariffed service, bundled electric power and energy delivered to the customer's premises consistent with the bundled utility service provided by the electric utility on the effective date of this amendatory Act of 1997. Upon declaration of the provision of electric power and energy as competitive, the electric utility shall continue to offer to such customers, as a tariffed service, bundled service options at rates which reflect recovery of all cost components for providing the service. For those components of the service which have been declared competitive, cost shall be the market based prices. Market based prices as referred to herein shall mean, for electric power and energy, either (i) those prices for electric power and energy determined as provided in Section 16-112, or (ii) the electric utility's cost of obtaining the electric power and energy at wholesale through a competitive bidding or other arms-length acquisition process.

220 ILCS 5/16-103(c).

As previously explained in the decision denying the motion to dismiss, "from a simple reading of Section 16-103(c), and its numerous references to cost, it is clear that market-based prices and cost-based rates are not mutually exclusive concepts." 05-0159 ALJ Decision at 6. Rather, "use of market-based prices is recognized as a mechanism for or subset of, not an exception to or 'replacement' of, establishing rate components based on cost. That is, use of market-based pricing is identified as one method for determining such costs, not an alternative thereto." *Id.* What is at issue in this proceeding is the Ameren Companies' costs: "In the instant case, the Ameren Companies' proposal is intended to recover only such costs as are actually incurred in procuring power and energy through the auction process." *Id.* Given that "use of market-based prices" is not

"inherently inconsistent with the principle of setting rate components at cost," *id.*, "the question is whether Section 16-103(c) prohibits the use of an auction or other market-based process in determining the costs of power and energy in setting rates for non-competitive customers." *Id.* (emphasis added).

There is no such prohibition in the statute. Rather, the statute requires that "rate components for competitive services may only be set, not surprisingly, by using market-based prices to establish cost." *Id.* But "just because that particular method is statutorily mandated for establishing certain cost components for competitive services does not somehow mean it is statutorily prohibited for other services or customers, particularly where, as in the instant case, use of market-based prices is expressly recognized as one means of establishing costs in Section 16-103(c)." *Id.*

Also, and again as observed in the decision denying the motion to dismiss these proceedings, the argument made regarding Section 16-103(c) would have a curious effect. "[I]t 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." *Id.* at 6. Because Section 16-103(c) defines market-based prices to include costs determined through a competitive bidding "or other arms-length acquisition process," 220 ILCS 5/16-103(c) (emphasis added), "[s]ince the Ameren Companies has divested itself of virtually all generation assets pursuant to Section 16-111(g) of the Act, it is unclear how the cost of procuring power and energy would be established for non-competitive services, when existing contracts expire at the end of 2006, if all such market-based mechanisms were prohibited as Movants contend. Stated another way, the Commission cannot set rates in a vacuum." 05-0159 ALJ Decision, at 7.

In order to better understand Section 103(c), it is helpful to put that provision in context. Section 16-103 is captioned, and defines, the "[s]ervice obligations of electric utilities." 220 ILCS 5/16-103. Subsection 16-103(a) provides that until a tariffed service is declared "competitive" pursuant to Section 16-113 — meaning that until the Commission determines that a customer segment or group can obtain equivalent electric service "from one or more providers other than the electric utility," 220 ILCS 5/16-113 — an electric utility remains obligated to provide tariffed retail services to that customer segment or group. 220 ILCS 5/16-103(a). However, once a tariffed service is declared "competitive," a utility generally can choose not to provide service at all or can provide unregulated service, priced any way it wants. 220 ILCS 5/16-113(b), 16-119.

This is consistent with the goal of bringing competition to formerly regulated retail markets.

Subsection 16-103(c), however, sets forth a limited exception to this rule for smaller customers. The section begins by declaring that "[n]otwithstanding any other provision of this Article" — meaning notwithstanding the provisions of Sections 16-103(a) and 16-113 described above — "each electric utility shall continue offering to all residential customers and to all small commercial retail customers" bundled electric service indefinitely, even if the service is declared competitive. 220 ILCS 5/16-103(c) (emphasis added). Section 16-103(c) then continues by defining how, when service to these smaller

customers becomes "competitive," the still-ongoing mandatory service obligation shall be priced, providing that pricing shall be at "at rates which reflect recovery of all cost components for providing the service." Finally, Section 16-103(c) concludes by defining "cost" in this setting, stating that "[f]or those components of the service which have been declared competitive, cost shall be the market based prices." *Id.* (emphasis added). "Market based prices" as referred to in Section 16-103(c) means either as provided for in Section 16-112, or the utility's "cost of obtaining the electric power and energy at wholesale through a competitive bidding or other arms-length acquisition process." *Id.*

The import and purpose of Section 16-103(c) is that the General Assembly determined in the 1997 Law that "residential" and "small commercial retail" customers — unlike all other customers — should be entitled to remain with their existing public utility, even after their service is declared competitive. Thus, these small customers would never be "forced into the market" and could continue to receive their electric service from their existing public utility as they had done before the 1997 Law. However, the General Assembly made sure that the utility could not take advantage of small customers who, through inertia or otherwise, chose to remain with their existing utility. Thus, the General Assembly provided that, once a service is declared competitive, these small customers who remain with the utility are entitled to rates based on costs determined by market forces. Even if the utility's actual costs prove to be higher (as might happen, for instance, if the utility had chosen to retain its own generation facilities and those facilities had proved to be higher-cost facilities), the utility is limited to charging these small customers rates based on costs determined by market forces.

Thus, Section 16-103(c) is an exception that applies for limited customer groups when a service is declared competitive, and it defines how a utility shall obtain "recovery of all cost components" at and after that time. Section 16-103(c) says nothing about the situation here, where there is no dispute that the relevant customer classes have not yet been declared competitive. The fact that "cost" must be based on market prices when a service for certain small customer groups is declared competitive does not mean that "cost" cannot ever be based on market prices at any other time. To conclude otherwise would be to effectively rewrite the statute as stating that "cost shall be the market based prices only for any service that has been declared competitive." But the word only nowhere appears in, and cannot be glossed onto, the provision. Absent an ambiguity, a statute must be interpreted in accordance with the words used by the legislature, and provisions that do not appear may not be added. *See, e.g., People v. Glisson*, 202 Ill. 2d 499, 504 (2002) ("where a statute is clear and unambiguous, courts cannot read into the statute limitations, exceptions, or other conditions not expressed by the legislature"); *Donahoo v. Bd. of Educ. of School Dist. No. 303*, 413 Ill. 422, 426 (1953). Therefore, Section 16-103(c) is inapposite: it addresses pricing for residential and small commercial customer classes that have been declared competitive. the Ameren Companies' tariff does not purport to apply to such a situation.

Other settled canons of statutory construction require the same result. First, an attempt should be made to avoid absurd results in construing a statute. *See, e.g., Chatham Foot Specialists, P. C. v. Health Care Servs. Corp.*, 2005 Ill. LEXIS 965, \* 50 (Sept. 22, 2005) ("We will not interpret a statute so as to achieve an absurd result."); *People ex rel.*

*Sherman v. Cryns*, 203 Ill.2d 264, 280 (2003) ("In construing a statute, we presume that the General Assembly, in its enactment of legislation, did not intend absurdity, inconvenience or injustice.").<sup>7</sup> It would be illogical to read into the statute a prohibition that until a service is declared competitive, a utility's recoverable costs cannot be based on competitive, arms-length transactions or market prices that define the utility's actual costs. Because the Ameren Companies no longer owns generation assets, it necessarily must acquire wholesale electricity in the market, at prices subject to FERC regulation. That is why "market-based prices and cost-based rates are not mutually exclusive concepts." 05-0159 ALJ Decision, at 6; *see also id.* at 7.

Put another way, it is not reasonable to read the statute as requiring a utility to price its mandatory services in the identical manner as it did in 1997 given the substantial changes engendered by the 1997 amendments, including the divestiture of generation facilities. Moreover, if the statute were read as the Attorney General urges, a utility that has no generation assets and necessarily must acquire power in the market would be prohibited from recovering its costs. It is also significant that, contrary to the implication in the Attorney General's argument, the Ameren Companies does not propose to charge a retail "market-based rate" for its utility services based on the potential competitive offerings of other retail suppliers. That indeed would be inappropriate for any customer class before a service is declared "competitive" under Section 16-113. Rather, the Ameren Companies seeks to recover its actual costs, which happen here — as often is the case — to be incurred at market-based prices. Thus, the Attorney General's references to the utility's "profits" and "excess profits" in connection with Rider MV, *see* AG Init. Br. at 11-12, are somewhat perplexing: The tariff proposes cost recovery without markup or profit.

Second, a "statute should be evaluated as a whole" and that "each provision should be construed in connection with every other section." *Abrahamson v. Ill. Dep't of Prof. Reg.*, 153 Ill.2d 76, 91 (1992). "[I]f possible," "no term [should be] rendered superfluous or meaningless." *Texaco-Cities Serv. Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 270 (1998). To conclude that, before a service is declared competitive, rates cannot be based on the market value of electric power and energy, would render Section 16-111(i) meaningless. That section explicitly provides that, before a service is declared competitive, the Commission must consider the market value of electricity in setting rates.

Finally, the Attorney General's argument that Section 16-103(c) proscribes Commission approval of Rider MV because the tariff allegedly fails to meet the "procedural and substantive standards" of the Act, fails for two reasons. AG Init. Br. at 10. First, this argument concerns the nature of the Commission's rate review under the provided for under the tariff and goes, not to the Commission's authority to approve the tariff but, rather, to the tariff's merits, discussed elsewhere in this Order. Second, Section 16-103(c) does not speak to such issues as what type and scope of review is required by the Act,

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<sup>7</sup> Such a construction might well raise constitutional concerns, *see supra* at 13 (discussing constitutional law concerning utility cost recovery), and statutes are to be construed so as to avoid obvious constitutional problems. *Eden Retirement Center, Inc. v. Dep't of Revenue*, 213 Ill. 2d 273, 281 (2004);

making it inapposite to the Attorney General's argument concerning the Commission's alleged lack of authority, due to Section 16-103(c), to approve the tariff. See *id.* at 10-12.

Therefore, for all these reasons, it is hereby found that nothing in Section 16-103(c) prohibits the recovery of costs based upon arms-length, competitive transactions or "market-based pricing."

### **B. Relationship of Illinois and Federal Law and Jurisdiction**

The Commission has no jurisdiction over wholesale electricity costs or rates because they occur in interstate commerce and are subject to FERC's exclusive regulatory authority. See *New York v. FERC*, 535 U.S. 1, 18-19 (2002); *Mississippi Power & Light Co. v. Miss. ex rel. Moore*, 487 U.S. 354, 371 (1988); see also *FPC v. So. Cal. Edison Co.*, 376 U.S. 205, 210 (1964). FERC's authority preempts state regulation of wholesale energy prices. See *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 966 (1986); *General Motors Corp. v. ICC*, 143 Ill. 2d 407, 416-17 (1991); *Mississippi Power*, 487 U.S. at 374; see also 16 U.S.C. § 824d(c) (describing FERC rate-filing procedure). Thus, a state may not subject a utility to unlawful "trapped costs" of wholesale power. *Mississippi Power*, 487 U.S. at 372 & n.12; see also *Nantahala*, 476 U.S. at 966, 972-73.

The Attorney General urges that the "*Pike County* exception" to federal preemption applies here, permitting the Commission to review the cost of power procured by the Ameren Companies at auction. AG Init. Br. at 18-19. There is simply no need, however, to reach the issue of whether *Pike County* could permissibly be applied or, if it could, whether the tariffs under consideration could legally abridge the Commission's authority. In the instant proceeding the Commission has exercised its traditional jurisdictional authority to review the method by which the Ameren Companies would make its wholesale power acquisitions, recover the resulting costs, and allocate those costs among the Ameren Companies' different customer classes. As discussed elsewhere in this Order, the proposal to use competitive procurement process to acquire the electricity needed by Illinois consumers at the lowest possible market price, and to be sold at cost, without markup, has been determined to be consistent with the Public Utility Act's requirement of just and reasonable rates, and is approved. In so doing, there has been no need to run afoul of federal law or to call into question any order of the FERC with respect to wholesale rates.

### **C. References to Post-2006 Initiative Reports and Results**

During these proceedings certain parties sought, in a motion in limine, to exclude all references to the Commission's Post 2006 Initiative, including all of the publicly available Working Group Reports that reflect the consensus items of each Working Group, and reports prepared by the Commission, its Staff, and its Office of General Counsel. That motion was denied. 05-0159 ALJ Decision of August 26, 2005.

Exclusion of all references to the Working Group Reports would be contrary to the Commission's policy that consensus items from its workshop processes are admissible in related proceedings; would result in an incomplete and misleading record; and would

deprive the Commission of valuable information for understanding and analyzing the complex and critically important issues that must be resolved as the State approaches the end of the statutorily mandated transition period, see 220 ILCS 5/16-101 *et seq.* Moreover, the Working Groups presented their findings publicly and each Report was made publicly available on the Commission's website. See Press Release, Ill. Commerce Comm'n, *ICC to Hear Recommendations Regarding Deregulation in Illinois* (Oct. 12, 2004); Press Release, Ill. Commerce Comm'n, *Stakeholders to Provide ICC Policymaking Guidelines for Future Illinois Electricity Restructuring* (Oct. 14, 2004). And the Post 2006 Initiative Preamble in no way precludes disclosure of consensus items.

Finally, the Commission has given neither more nor less weight to the Post 2006 consensus items than those materials deserve. On the one hand, the Commission, its staff, and the numerous participating stakeholders invested a great deal of time and resources into the working group process, which efforts were rewarded when the parties reached consensus on many items and helped establish a framework the Commission could utilize in addressing post-2006 issues. On the other hand, the Commission has before it in these proceedings an extensive record consisting of far more than the post-2006 Working Group Reports, and in making its determination in these proceedings regarding the proposed tariffs the Commission has considered the entire record.

#### **D. Evidentiary Issues**

Evidentiary issues are addressed in other parts of this Order.

#### **E. Other Legal Issues**

On August 31, 2005, the Governor of Illinois intervened in these proceedings and filed a letter directed to members of the Commission in which he expressed his view that the Commission must reject the competitive procurement tariff proposed by the Ameren Companies.

The Illinois Supreme Court has observed that, in establishing this Commission, "appointed by law and informed by experience,... the Legislature intended to create an office of dignity and great responsibility" that would not be swayed by "fear of popular disfavor." *State Pub. Util. Comm'n ex rel. City of Springfield v. Springfield Gas & Elec. Co.*, 291 Ill. 209, 216 (1919). The Commission is keenly aware that it was created as an independent body, one capable of balancing the public's need for efficient, safe and affordable utility service with the need to encourage the investment of private capital in public service, and whose acts have the force and effects of acts of legislature itself. See *Alton Water Co. v. Ill. Commerce Comm'n*, 279 F. 869, 871 (S.D. Ill. 1922); see also *Lunding v. Walker*, 65 Ill. 2d 516, 525-27 (1976). 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 "[l]osing complete independence or impartiality" or adversely affecting "the confidence of the public in the integrity of the Commission.").

Indeed, the Commission's independence is reflected in the broad powers it enjoys as the expert body committed with plenary power over public utility regulation. See *Archer-Daniels-Midland Co. v. Ill. Commerce Comm'n*, 184 Ill. 2d 391, 397 (1998) ("[T]he Commission is entitled to great deference because . . . [of its] expertise in the field of public utilities."); *Cent. Ill. Pub. Sere. Co. v. Ill. Commerce Comm'n*, 243 Ill. App. 3d 421, 445 (4th Dist. 1993) ("Because of its complexity and need to apply informed judgments, rate design is uniquely a matter for the Commission's discretion."); 220 ILCS 5/10-201(d) (requiring reviewing courts to hold Commission findings of fact prima facie true, and Commission rules, regulations, orders, and decisions prima facie reasonable). The Commission exercises a legislative power granted to it by the General Assembly, see, e.g., *Monarch Gas Co. v. ICC*, 261 Ill. App. 3d 94, 100 (5th Dist. 1994), and its decisions are subject to appellate review only by the Courts, see 220 ILCS 5/10-201.

The Commission is also conscious of the fact that the Act sets forth extensive procedural requirements to ensure that all parties in a tariff proceeding are afforded due process of law and that decisions are rendered based on the record. See *generally* 220 ILCS 5/9-201, 10-101, 10-103, 10-104, 10-108, and 10-110; see *also Fleming v. Ill. Commerce Comm'n*, 388 Ill. 138, 147 (1944) ("A hearing before the commission is not a partisan hearing with the commission on one side arrayed against the utility on the other. It is an administrative investigation instituted for the purpose of ascertaining and making findings of fact."); *cf. Pillsbury Co. v. Fed. Trade Comm'n*, 354 F.2d 952, 965 (5th Cir. 1966) (setting aside Federal Trade Commission decision as tainted by congressional interference which precluded "appearance of impartiality"). Nor can a rate request filed by a utility be denied without a hearing to determine whether the rate would be just and reasonable. See *Ill. Bell. Tel. Co. v. Commerce Comm'n ex. rel. City of Edwardsville*, 304 Ill. 357, 360 (1922).

The Commission acknowledges the Governor's intervention and comments. Our decision, however, must be based on the evidence in the record and the legal principles established by the Act and other relevant law.

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

##### **A. Markets' Relationship to Auction Process**

##### **Ameren Companies**

The Ameren Companies explained that the market for wholesale power is the only source of supply that the Ameren Companies have, and that the proposed competitive procurement auction is the best means of obtaining the lowest price at wholesale. The Ameren Companies demonstrated that the markets have sufficient generation to support the auction, and that there is more than adequate capacity in the market to make the auction work. The Ameren Companies also showed that the wholesale market is not flawed, as FERC has found, and noted that the Commission does not have jurisdiction to make an alternative finding.

CUB and the AG argue that the wholesale market is flawed, and that, therefore, the Commission should not approve the auction process or rates that reflect the costs incurred in the wholesale market. The Ameren Companies respond that CUB and the AG have not offered meaningful evidence for their position that the wholesale market is flawed, and do not define the scope of the market to which they refer. The Ameren Companies also note that CUB and the AG acknowledge that the Ameren Companies have no other available source of power to provide the service that their customers seek, and that they do not argue that the market is too flawed to serve as a source of power for the Ameren Companies. The Ameren Companies believe that CUB and AG want customers to pay lower costs, but do not identify the means by which the Ameren Companies can find an actual source for power at such lower-than-market price.

The Ameren Companies demonstrate that the State cannot compel the Ameren Companies to buy high and sell low. There is nothing in the record to show that the Ameren Companies have any available lower cost source of supply, or that there is any material flaw in the wholesale markets. In particular, the Ameren Companies note that CUB witness Fagan and AG witness Rose presented virtually no testimony 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 Ameren Companies explain, the testimony of Fagan and Rose 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. The Ameren Companies believe that these witnesses' testimony is irrelevant, frequently wrong and/or incomplete.

### **Staff**

Staff believes that any deficiencies in the competitiveness of the retail electricity markets merely add to the urgency and importance of approving viable and appropriate procurement methods for electric utilities to implement, since consumers who cannot rely on a competitive retail market should at least be able to rely upon their regulated public utilities to supply them with electric power. Staff stated that assessing the competitiveness of electricity markets is pertinent to a broad debate about policies toward the electric industry; but not directly pertinent to a debate over how Illinois electric utilities will acquire electric power to sell to their retail customers starting in 2007. Staff noted that the Ameren Companies have an obligation to provide power and energy to most of its retail customers, and that the Companies must acquire such power and energy only in the wholesale market. Staff also noted that CUB and AG had not shown why the New Jersey model should be rejected, or how an alternative would somehow circumvent a less-than-competitive wholesale market and produce a better result for ratepayers.

Staff noted the testimony of several witnesses (Zuraski, Nelson, Frame) who indicated that CUB and AG had not provided a workable alternative to the Ameren Companies' proposal. Staff concludes that AG and CUB witnesses had, at best, provided rough

sketches of alternative procurement proposals, and that those alternatives (i) still rely upon the same wholesale market, (ii) involve actions arguably outside the scope of the Commission's jurisdiction, (iii) involve actions arguably contrary to Illinois statutes, or (iv) are simply too vague and incomplete.

### **CCG**

CCG explained that the Ameren Companies' auction will entail substantial participation by suppliers, and will ensure that the Ameren Companies procure power and energy in the most cost-effective manner. CCG noted that such participation will bring the benefits of competition to the Ameren Companies' customers.

### **DES/USESC**

DES/USESC argues that, although there has been demonstrable progress in the development of the competitive retail electric market in Illinois, the majority of Ameren's residential service customers do not have a competitive option. However, DES/USESC believes that barriers to a competitive retail market have been and are being removed in Illinois, albeit slowly, and contends that Illinois law requires active exploration for opportunities to advance competition.

### **AG**

AG argued that the wholesale market is not sufficiently developed to ensure competitive results from an auction. AG contends that auction prices could be affected by relatively higher regional prices.

### **CUB**

CUB claimed that the MISO market is not fully developed, resulting in uncertainty regarding the competitiveness of the market. CUB argues that this uncertainty could affect the ability of auction participants to secure competitive prices in the auction.

### **IIEC**

IIEC argues that, in the segment of the retail supply market that many consider to be the one in which retail suppliers are most likely to compete, the level of retail supplier activity has been unimpressive. Further, IIEC contends that until the retail market conditions improve sufficiently for the emergence of a competitive market that provides "economically viable" options to all customers, it is important to ensure that the utility provides an avenue to the more competitive wholesale supply market.

### **Commission Analysis and Conclusion**

The Commission concludes that the Ameren Companies must purchase their supply requirements, after the close of the mandatory transition period, from the wholesale markets. The proposed competitive procurement auction is integrally related to the

wholesale markets. The evidence demonstrates, as discussed further below, that the auction mechanism will be an effective, efficient, and transparent means for procuring power in the wholesale market, and will further the Restructuring Act's goals for establishing competition in Illinois and ensuring continued reliable electricity supply at the lowest possible long-term cost.

The Commission also notes that the FERC has concluded that the wholesale market is competitive and allows the sellers in that market to sell at market-based rates. No party has offered any legal or evidentiary justification for rejecting the FERC's findings in this regard.

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

### **Ameren Companies**

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, explaining 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 are 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. Pfeifenger 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. Pfeifenger 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.

## **AG**

The AG asserted that data from other states that have relied on the wholesale market and used competitive procurement processes to determine retail electricity rates suggests that caution is in order. The AG claimed that in general, these states are in regional wholesale markets more fully developed than Illinois' and there have been significant rate increases in these states. The AG further asserted that if the Ameren Companies' auction proposal were approved, rates could be substantially higher than

retail customers are now paying. (Rose Dir., AG Ex. 1.0, Corrected, p. 4) The AG further claimed that most states have decided to discontinue efforts implementing or considering retail access, but noted that 16 states and the District of Columbia do fully allow such access and two other states allow only for larger customers. (Rose Dir., AG Ex. 1.0, p. 23) Dr. Rose claimed that other states' experience is relevant. (Rose Reb., AG Ex. 5.0, p. 15)

### **Commission Analysis and Conclusion**

Given that the CPA is closely patterned on the New Jersey auctions, the Commission finds the New Jersey experience to be particularly instructive. The record contains substantial evidence that such experience has been highly successful. While the Commission is very interested in the charges resulting from retail tariffs, their evidence does not indicate that the New Jersey action proposal resulted in rate increases. Moreover, the testimony concerning other states' experience with restructuring generally, and procurement strategies specifically, is not particularly relevant, as Illinois' statutory framework and the Ameren Companies' proposal both differ in significant ways, and Illinois has experienced demonstrable success with restructuring.

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

##### **Ameren Companies**

Ameren Companies explain that they are entitled to recover their legitimate cost of service, and that they possess no meaningful level of capacity, regardless of the state of retail market conditions. 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.

The Ameren Companies note that 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. The Ameren Companies maintain that 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).

The Ameren Companies thus believe that the status of residential competition is not relevant and that 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. Further, the Ameren Companies maintain that the complaints of CUB and the AG regarding the state of the retail market amounts to a proposal ICC set rates below the actual cost of procuring power. The Ameren Companies note that they cannot sell at a loss and somehow make it up on volume.

## **Staff**

Staff explained that any deficiencies in the competitiveness of the retail electricity markets merely add to the urgency and importance of approving viable and appropriate procurement, as consumers who cannot directly take service in a competitive retail market should at least be able to rely upon regulated public utilities to supply them with electric power. Staff claimed that assessing the competitiveness of electricity markets is pertinent to a broad debate about policies toward the electric industry; but not directly pertinent to a debate over how Illinois electric utilities will acquire electric power to sell to their retail customers starting in 2007. Staff noted the Ameren Companies' obligation to provide power and energy to most of its retail customers, and its ability to acquire such power and energy only in the wholesale market. Staff also noted that CUB had not shown why the New Jersey model should be rejected, or how any alternative would somehow circumvent a less-than-competitive wholesale market and produce a better result for ratepayers.

## **CCG**

CCG explained that the Ameren Companies' auction will entail substantial participation by suppliers, and will ensure that the Ameren Companies procure power and energy in the most cost-effective manner. CCG noted that such participation will bring the benefits of competition to the Ameren Companies' customers.

## **IIEC and CES**

IIEC and CES note that retail competition to date in Illinois has been unimpressive, and request that the Commission continue a supportive approach to removing barriers to customer choice.

## **AG**

The AG argues 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. The AG claimed that whether retail customers will benefit depends on the resolution of possible problems concerning market power, costs of operating the transmission system, and price setting along the vertical part of the supply curve. The AG asserted that these possible problems cannot be solved through a new procurement policy for retail customers or new wholesale market design rules, and that policy makers should exercise exceptional care until more is known about such problems. The AG also asserted that given the current state of the Illinois regional wholesale market, retail price will likely increase considerably if the proposed auction is held in the near future.

## **Commission Analysis and Conclusion**

The Commission concludes that the proposed auction will facilitate all customers benefiting from efficient competition. The record shows that the proposal will keep the Ameren Companies' costs of procuring energy and capacity at a minimum, which will benefit its customers. The Commission finds the AG's discussion of potential problems to be unpersuasive and largely based on unsubstantiated speculation about alleged market failures that have not occurred and that the evidence shows are not likely to occur. Moreover, the AG's suggestion that policy makers use care when determining policy does not itself constitute any reason to reject a competitive procurement mechanism that has been shown to be beneficial. Finally, the Commission finds little merit in AG's assertion that prices will increase because of the auction. The evidence indicates otherwise, and the AG's argument confuses the fact that, especially after an extended rate freeze, prices may increase, but the auction is the best tool for keeping any such increase to as low as reasonably possible.

#### **D. Relevant Product Market**

##### **1. Required Products**

The Ameren Companies' 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**

#### **AG**

AG argues that suppliers who do not already have capacity may find it difficult to participate in the auction.

#### **CUB**

Mr. Fagan 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.

#### **Ameren Companies**

The Ameren Companies respond that 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. And, 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, the Ameren Companies maintain that Mr. Fagan's testimony on this topic is also incomplete and/or wrong, because Mr. Fagan's unstated assumption is that if generating resources do not receive capacity payments through MISO-administered capacity markets, they will not receive any capacity payments at all. Mr. Frame 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. Thus, 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, the Ameren Companies believe that 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, the Ameren Companies' 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.*

### **Commission Analysis and Conclusions**

The Commission agrees with the Ameren Companies that suppliers will be able to acquire capacity they need, even in the absence of a centralized capacity market. In particular, the Commission notes that, even if this were a problem, CUB has not offered any solution. Simply rejecting the auction would not make capacity any more readily available within MISO, where the Ameren Companies operate, than it would be in the auction scenario.

#### **E. Relevant Geographic Market**

##### **1. Significance of Political Boundaries**

The Commission finds that the parties generally agree that political boundaries have no significance to the market for electricity. The Commission notes the AG's contention that a "relevant market" should be defined, according to antitrust principles, but also notes that the scope of this proceeding and the Commission's authority does not include determining antitrust issues. The Commission finds that the relevant market in these proceedings is MISO.

##### **2. MISO /PJM Seam & Joint Operating Agreement**

### **CUB**

CUB witness Fagan asserts that the PJO-MISO seam presents a barrier to effective trade between the regions. CUB Ex. 1.0, p. 11-16.

### **Ameren Companies**

The Ameren Companies respond that CUB's 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. *Id.*

The Ameren Companies also note that Mr. Fagan has overstated the significance of the PJM-MISO seam, as there is more than 120,000 MW of generation capacity within MISO that is deliverable to MISO load. And, Mr. Frame testified that 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. Mr. Frame testified that, to the extent that seams concerns arise because of "pancaking" of transmission charges, that concern already has been eliminated, as the transmission charge for delivery to a MISO sink is the same whether the source is in PJM or MISO. *Id.* Also, Mr. Frame testified that 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.* The Ameren Companies note that 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.

### **Commission Analysis and Conclusions**

The Commission concludes that the so-called "seam" between PJM and MISO will not affect the competitive environment in either RTO. The record shows that such "seam" has diminished, and that the RTOs have already moved far in creating a joint and common market – that they are already operating together under the JOA, with unprecedented cooperation. The RTOs have the same power flows on the grid and same locational marginal prices, and now have a single transmission rate. Furthermore, the record shows that even if there some sort of impediment from a "seam," it would be irrelevant, as the MISO market is more than adequate to support the Ameren Companies' auction, regardless of the accessibility of the PJM market.

#### **F. Market Characteristics, Including Supplier Concentration**

##### **CUB**

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.*

## **AG**

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.

## **Ameren Companies**

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.<sup>8</sup> But the MISO is not implementing an untried system. In 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

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<sup>8</sup> During the first 2 months of operation of the MISO’s Day 2 markets, cost-based bids were used.

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).<sup>9</sup> 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. (the Ameren Companies 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 concerns are simply much less likely in broader as opposed to narrower markets. Resp. Ex. 13.0, p. 15.

## **Commission Analysis and Conclusions**

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<sup>9</sup> 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.

No party has demonstrated that there are any significant market power issues. The Commission agrees that the Ameren Companies have access to over 120,000 MW of capacity within MISO alone. There is no evidence that any market participant can exercise market power within MISO, or over other sources of supply. CUB and the AG, which raise the specter of market power, both acknowledge that the numbers they present do not correspond to the relevant market. Accordingly, their positions are rejected.

## **G. Transmission Constraints**

### **Ameren Companies**

The Ameren Companies state 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 Area<sup>10</sup> 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.

Ameren witness Frame explained that Dr. Rose's testimony regarding transmission constraints did not discuss 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.<sup>11</sup> Moreover, even if there

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<sup>10</sup> 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 Constraints 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."

<sup>11</sup> 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 the Illinois region's ability to meet its near-term reliability goals "is adequate in the near term."

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.

## **AG**

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.

## **CUB**

CUB witness Fagan also argued that transmission constraints limit the competitiveness of the wholesale market.

## **Commission Analysis and Conclusions**

The Commission concludes that there is no evidence in the record that transmission constraints in any way limit the competitiveness of the market in which the Ameren Companies purchase supply. No party has identified any specific transmission constraint that is relevant here. Moreover, there is no reason to believe that procurement on any basis other than an auction would be affected less by transmission constraints.

### **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**

## **CUB/AG**

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. Mr. Fagan believes that the auction

would be vulnerable to the exercise of market power “absent strengthened mitigation authority.” Resp. Ex. 13, p. 11. AG witness Dr. Rose draws similar conclusions regarding market monitoring mechanisms. AG Ex. 1.0, at pp. 3-4.

### **Ameren Companies**

As previously discussed, the Ameren Companies believe that 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.*

### **Commission Analysis and Conclusions**

The Commission is not persuaded that MISO’s operations, over which this Commission has no control, are flawed. The Commission agrees with the Ameren Companies that the record shows that MISO has adequate rules and controls. Moreover, CUB and the AG do not explain how some other procurement method would be less vulnerable to lax controls. Accordingly, their position is rejected.

2. **MISO Market Monitoring Unit (“MMU”)**
3. **Proposed Illinois Market Monitor**

CUB proposes the establishment of an “Illinois Market Monitor.” The Commission lacks authority to adopt this proposal and it is hereby rejected.

### **K. Other Competitive Market Issues**

## V. AUCTION DESIGN ISSUES

### A. General Effectiveness and Suitability

#### The Ameren Companies

The Ameren Companies proposed a multiple round descending clock format auction to acquire vertical tranches of power to serve their customers starting in 2007, asserting that 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' pointed out that the proposed auction design is a tried-and-tested, successful process to acquire power and energy, Resp. Ex. 10.0, p. 21, and this process is in accord with Federal Energy Regulatory Commission ("FERC") guidelines, and has been sanctioned by other states' regulatory bodies.

The Ameren Companies noted that they 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 pointed out that they 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.* Ameren also noted that the Staff's report 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.*

With the proposed vertical tranche auction, the Ameren Companies stated that they 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, and the use of the auction to obtain longer-term products (*i.e.*, 1, 2 and 3-year contracts in the first auction) 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 pointed out that their 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 would be directly involved in and have oversight of the auction process. *Id.*

The Ameren Companies asserted that 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 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 p. 84. The Ameren Companies explained that 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, and so 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 noted that their proposal includes several competitive safeguards to protect against potential anti-competitive behaviors. *Id.* at p. 85. For example, the volume cutback provisions would 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 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 44. It is the best procurement process for customers regardless of the state of the wholesale markets. Resp. Ex. 12.0, p. 20.

The Ameren Companies pointed out that 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, and that 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.* p 6. The Ameren Companies further noted that 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 concluded that their proposal is the best option for meeting the post-2006 obligations, and that 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.

## **Staff**

Staff witness Salant agreed that the proposed simultaneous descending clock format auction is an appropriate mechanism for an Illinois competitive power procurement process:

[A] significant literature exists in the field of economics that analyzes the advantages and disadvantages of the SMR auction format and its variants (including the SDCA) under different circumstances. ... In general, the economics literature and the global experience with the SMR auction format supports Ameren’s proposal to use the SDCA for electricity procurement.

(ICC Staff Ex. 1.0, pp. 12-13.) However, Staff noted that other parties presented evidence questioning the use of the basic auction format: first, there was testimony

either implying or contending that no competitive procurement process should be utilized; and second, there was testimony that another auction format can perform better. Staff rejected these critiques because they did not persuasively support a rejection of the basic auction design. Furthermore, Staff noted that the record in the case provides no better (or even barely adequate) alternatives to the auction proposal presented by the Ameren Companies. In summary, Staff concluded that the basic SDCA auction concept, as proposed by the Ameren Companies and endorsed by Staff witness Salant, is an appropriate competitive procurement method for securing power supply commitments for serving the Ameren Companies' retail customers.

### **DES-USESC**

DES-USESC testified that the Commission should direct the Ameren Companies to make two fundamental changes to its competitive procurement proposal: First, DES-USESC asserted that the Ameren Companies' proposal improperly relies upon contracts longer than one year, and because of their long terms, such contracts are saddled with an elevated risk premium. DES/USESC Ex. 1.0, pp. 164-65. DES-USESC argued that consumers may pay higher default service prices than they would under a model with shorter-term contracts and these long-term contracts also remove the impact of changes in market price driven by supply and demand. *Id.* at ll. 167. DES-USESC asserted that such price distortions can contribute to a lack of demand side reductions, and increased environmental harm due to increased energy consumption. *Id.* at ll. 168-69. Second, DES-USESC testified that the Ameren Companies' proposal segments the availability of auction products to customers by demand level in a way that could hinder the further development of competition. *Id.* at pp. 171-72. DES-USESC explained that if customers are to fully realize the benefits of a competitive market, multiple products must be offered by multiple suppliers to a full range of customers.

### **Attorney General**

The Attorney General testified that the auction would result in a uniform price that all BGS Suppliers receive, irrespective of their costs or their ability to sell at a lower price. Attorney General witness Reny asserted that other procurement methods could capture the cost differences for consumers better than the declining clock, clearing price auction proposed by the Company. Attorney General Ex. 4.0, p. 4. Dr. Reny set out certain conditions under which multilateral negotiations or an auction with a reserve price (or price caps) could be expected to result in lower prices than the clearing price auction.

The Attorney General further testified that under the auction proposed by the Ameren Companies, low cost producers of electricity which use nuclear energy or coal can obtain prices based on the higher market prices for coal or natural gas. Attorney General Ex. 1.0, p. 29; see also Attorney General Ex. 5.0, pp. 8-9. The Attorney General also expressed concern about the immaturity of the MISO RTO. The Attorney General also asserted that the auction format proposed by the Ameren Companies produces undue risks to consumers by holding a single, annual auction for multi-year supply, since a single auction for an 8,000 MW obligation is substantial, and obtaining it all at one time puts consumers at risk for all of their supply. Attorney General Ex. 2.0, pp. 4-6, 16-17.

The Attorney General argued that securing all supply in a single auction would prevent the Ameren Companies from minimizing the effect of adverse circumstances by spreading its purchases over a greater time frame. *Id.* Finally, the Attorney General testified that the pressure of purchasing enough electricity to replace all existing supply could make it more difficult for the Auction Manager to postpone or otherwise modify the auction date because the risk of finding immediate replacement supply for the entire load is too great. *Id.*

## **CUB**

CUB testified that the auction is structured to financially benefit Ameren Corporation and Ameren Energy Resources (the generating companies) to the detriment of the Ameren Companies' customers because Ameren Energy Resources is able to produce power at very low cost. CUB further testified that the auction process also is designed to avoid or overcome FERC scrutiny.

## **Midwest Generation**

Midwest Generation stated that it supports the auction design as currently proposed by the Ameren Companies, as the particular auction design proposed by the Ameren Companies allows them to take advantage of competition in procuring goods and services in an efficient manner and has been previously used and refined in New Jersey to sell BGS. Midwest Generation Br., pp. 2-3. Midwest Generation further explained that the auction would be transparent, auction will encourage BGS Suppliers to participate so long as it is commercially fair and reasonable in its terms, proposed auction makes available the benefits of market competition while also providing to retail customers reasonably stable rates, and the auction would be subject to regulatory review. *Id.* at pp. 4-6.

## **Commission Analysis and Conclusion**

The Commission has long recognized the need for adequate, reliable power and energy supply for Illinois customers post-2006, and initiated the Post 2006 Initiative for that very purpose. The Post 2006 Initiative featured participation from Staff and a variety of stakeholders holding individual, and often competing, interests, and identified eighteen characteristics of an ideal procurement process to serve as benchmarks for evaluating alternatives. The results of months of presentations and evaluation by all parties involved revealed that a vertical tranche auction best met the goals of providing adequate power supply at the best prices for consumers, as noted in the Staff Final Report of the Post 2006 Initiative. The Commission finds that the vertical tranche auction proposed by the Ameren Companies best meets the needs of Ameren Companies' customers in providing adequate, reliable, and reasonably priced supply post-2006.

### **B. Full-Requirements Product**

#### **The Ameren Companies**

The Ameren Companies proposed 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. Ameren testified that each tranche of BGS supply would be sized to be approximately 50 MW of peak load for the subject group. Resp. Ex. 10.0, pp. 3-4.

The Ameren Companies explained that 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 would provide NITS and acquire the necessary ancillary services. *Id.* The Ameren Companies noted that 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 Ameren Companies explained that 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, while allowing the BGS Suppliers to concentrate on what they do best – take on and manage all generation related responsibilities, including risk management. *Id.*

### **Staff**

Staff pointed out that the full-requirements product essentially removes the burden of generation portfolio decision making from the shoulders of the utilities (and to some extent, the Commission) and, instead, places the burden onto the BGS Suppliers' shoulders and that this was an obvious change from the traditional role of the typical utility company, which acquired its own fleet of generators to meet the needs of its customers. However, Staff noted that it is very similar to the type of full-requirement product that each of the Ameren Companies currently purchases from wholesale suppliers. Staff explained that alternatives to procuring vertical tranches of the full-requirements load would entail procuring an appropriate array of specific types of supply contracts and/or generating assets (*e.g.*, an assortment of contracts or assets designed to serve base-load, intermediate-load, and peaking-load), but Staff opposes them. Instead, Staff supports the vertical tranche concept since, as articulated by Ameren witness LaCasse (Resp. Ex. 6.0, pp. 30-31). Staff, therefore, recommended that the Commission approve the basic full-requirements product concept in this docket.

### **Attorney General**

The Attorney General testified that full-requirements, load following contracts put the risk of volume fluctuation exclusively on the BGS Supplier, and each BGS Supplier will build

the risk of this uncertainty, which implicates among other things weather, economic conditions, and customer switching, into their bids by including a risk premium. Attorney General Ex. 2.0, pp. 8-9, 14. The Attorney General argued that the Ameren Companies did not present or conduct any study assessing the size of the risk premium that may be included in the bid price, *Id.* at p. 8, and in the absence of evidence about the magnitude of the risk premium that could be expected in contracts to serve vertical tranche, full-requirements contracts, consumers are left vulnerable to paying excessively high prices to cover risks that could be more economically managed.

### **Commission Analysis and Conclusion**

The Commission concludes that the Ameren Companies' proposed full-requirements product is in the best interest of customers in the Ameren Companies' service territory. Successfully managing an energy portfolio requires that there be a sufficient amount of energy to serve customers' needs, while safeguarding against paying for energy that is not needed. In order to adequately provide for energy supply that varies widely by month, by time of day, and in response to particular events, a utility without substantial generation assets would be left vulnerable to certain risks. The Ameren Companies' proposal for a full-requirements auction product ensures that customers in the Ameren Companies' service territory have adequate energy supply, and that they pay only for the energy that they use. In shifting the risk from customers to BGS Suppliers, customers are provided an adequate electric supply while at the same time gaining rate stability.

#### **a. Provision of Ancillary Services**

### **The Ameren Companies**

The Ameren Companies pointed out that under their full-requirements product proposal, BGS Suppliers are financially responsible for the cost of ancillary services. The Ameren Companies, however, would actually procure the necessary ancillary services. The Ameren Companies explained that this proposal creates a competitively neutral position for all potential BGS Suppliers. Resp. Ex. 11.0 (revised), p. 44.

The Ameren Companies noted that Staff witness Mr. Ogur proposed that BGS Suppliers be permitted to supply ancillary services to the Ameren Companies as part of the provision of BGS Supply. The Ameren Companies argued that this Staff proposal should be rejected because the "self-supply" of Ancillary Services is not a simple undertaking, but is complex and costly. Resp. Ex. 11.0 (revised), p. 44. The Ameren Companies explained that customer benefits, if any, from Mr. Ogur's proposal likely will be very small and transitional in nature and no potential BGS Suppliers expressed concern with the current provisions. *Id.*, see also Resp. Ex. 18.0, p. 35. The Ameren Companies further explained that 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. The Ameren Companies also pointed out that 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, Resp. Ex. 18.0, pp. 34-35 and 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 would take this option. *Id.* at p. 35.

Finally the Ameren Companies explained that if the Commission determined that BGS Suppliers should be permitted to “self-supply” ancillary services, the SFC must be revised to ensure tariff compliance and cost recovery. *Id.*

### **Staff**

Staff witness Mr. Ogur proposed 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. According to Staff, the technical and financial burdens are not sufficient warrant withholding the self-supply option from BGS suppliers.

### **Commission Analysis and Conclusion**

The Commission agrees with the Ameren Companies' proposal that BGS Suppliers be financially responsible for the cost of ancillary services but that the Ameren Companies would actually procure the necessary ancillary services. Because, customer benefits, would be very small and transitional in nature and no potential BGS Suppliers expressed concern with the current provisions, Staff's proposal that BGS Suppliers be permitted to supply ancillary services to the Ameren Companies should be rejected.

#### **b. Identification of Resources**

### **The Ameren Companies**

The Ameren Companies noted that Staff witness Mr. Ogur expressed concerns that requiring BGS Suppliers to identify the specific capacity resources being used to fulfill their SFC obligations would require the disclosure of commercially sensitive information. The Ameren Companies asserted that Mr. Ogur's concerns were unfounded because identifying capacity resources is consistent with industry practice, Resp. Ex. 11.0 (revised), p. 49; Resp. Ex. 18.0, p. 39, and it does not disclose commercially sensitive information. Resp. Ex. 11.0 (revised), p. 49. The Ameren Companies pointed out that no potential BGS Suppliers have objected to the disclosure of capacity resources. *Id.* at p. 50, Resp. Ex. 18.0, p. 39. Moreover, the Ameren Companies point out that capacity information required under the SFCs is available to the Ameren Companies, to their affiliates, and to other MISO market participants. Resp. Ex. 11.0, p. 52

### **Staff**

Staff witness Mr. Ogur proposes that BGS Suppliers should not be required to identify the specific capacity resources being used to fulfill their SFC obligations would require the disclosure of commercially sensitive information. See, e.g., ICC Staff Ex. 4, p. 40. 28. According to staff, the technical and financial burdens are not sufficient warrant withholding the self-supply option from BGS suppliers.

## **Comission Analysis and Conclusion**

Staff'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. The SFC cannot compel the MISO, MAIN, or any other regional reliability organization ("RRO") to modify their business practices and administrative systems.

### **C. Multiple Round Descending Clock Format**

#### **The Ameren Companies**

The Ameren Companies proposed that a clock auction be used. Resp. Ex. 12.0, pp. 7-8. The Ameren Companies explained that 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. If the supply for a product exceeds the quantity needed, the price for the product ticks down for the next round. *Id.* Then 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. As the Ameren Companies explained, these final clearing prices will determine the amount of payments made to BGS Suppliers. *Id.* The Ameren Companies testified that the proposed auction process is the best method of procuring supply for the Ameren Companies' customers in the post-2006 period. The Ameren Companies explained that 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. This reduces the uncertainty that bidders face regarding market value and their competition. *Id.* at pp. 11-12. The Ameren Companies pointed out that 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.* at p. 13, and BGS Suppliers 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.* The Ameren Companies also noted that 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, and so the auction promotes the best match of product to the BGS Supplier because bidders are able to switch from one product to another. *Id.*

## **Commission Analysis and Conclusion**

The Commission finds that 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 and can be expected

to lead to the efficient allocation of the supply responsibility over the Ameren Companies' different products. The Commission also notes that 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 as a result the auction format does not advantage established players or affiliates and enables prospective bidders to participate on a fair and equal basis. The Commission, therefore, finds that the clock auction format is appropriate for the Ameren Companies' service area.

## **1. Load Caps**

### **The Ameren Companies**

The Ameren Companies explained that load caps limit the number of tranches that a single bidder can bid and win in the auction. Resp. Ex. 10.0, p. 9. Load caps are one of the auction's competitive safeguards because 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 BGS Suppliers. *Id.*

The Ameren Companies initially proposed that each potential BGS Supplier's participation in the auction be limited by a 50 % load cap. *Id.* at p. 11. The Ameren Companies noted that this load cap set a balance between a lower load cap's costs in terms of limiting participation, and potential benefits in terms of limiting overstatement of interest, curbing influence on the auction results, and promoting diversification of the BGS Supplier base. Resp. Ex. 12.0, p. 30. However, in response to Staff's and parties' positions on load caps, the Ameren Companies proposed a revised load cap of 35%.

The Ameren Companies asserted that the 100% load cap, suggested by IIEC witness Mr. Collins, does not achieve this balance because 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.

### **Staff**

Staff noted that the weight of the evidence supports the Ameren Companies' rebuttal-stage 35% load cap proposal. Further, it is within the range recommended by Staff witness Salant and by the Ameren Companies witness LaCasse. Thus, Staff recommended that the Commission reject the IIEC proposal for the elimination of the load cap, and that the Commission approve the use of a 35% load cap per auction.

### **IIEC**

IIEC argued that load caps in general would reduce the competitiveness of the auction and possibly result in higher prices, and that the Ameren Companies' proposed 35% was

difficult to justify in light of the fact that it would prevent the lowest cost BGS Supplier from taking as many tranches as desired. IIEC Br., p. 14-22. IIEC asserted that Instead, IIEC witness Brian Collins suggested 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.

### **Midwest Generation**

Midwest Generation testified that, along with the Ameren Companies and Staff, it supported the proposed load cap of 35% as appropriate for the procurement auction. Midwest Generation noted that this is similar to the 33% load cap used in the New Jersey BGS auctions. Midwest Generation further noted that only one witness offered by one intervenor (*i.e.*, IIEC) disagreed with the proposed load cap.

### **Commission Analysis and Conclusion**

The Commission concludes that the Ameren Companies' proposed load cap, to be set at 35%, is appropriate. Load caps serve as a competitive safeguard, limiting the influence that any one bidder can have on the results of the auction. At the same time, load caps limit the utility's exposure to any one particular BGS Supplier, thereby shielding the utility and its customers from risk.

## 2. Starting Prices

### **The Ameren Companies**

The Ameren Companies testified that the Auction Manager and the Ameren Companies, in consultation with Staff, would set a minimum and maximum starting price for each segment of the auction. Resp. Ex. 12.0, pp. 85-86. As part of the application process, the Ameren Companies explained that bidders submit indicative offers at the minimum and at the maximum starting prices. *Id.* at p. 86. These indicative offers represent the bidders' maximum interest at each of these prices. The Auction Manager and Ameren Companies, in consultation with Staff, would set round 1 prices between the minimum and maximum starting prices. *Id.*

### **Staff**

Staff pointed out that no party objected to the above-specified description, purpose, and mechanics. Hence, Staff recommended that the Commission approve the Ameren Companies' proposal with respect to the auction's starting prices.

### **Attorney General**

The Attorney General claimed that the Ameren Companies failed to include an estimate of starting bids or a method for determining the maximum and minimum opening bids, and contended that the proposal therefore leaves consumers vulnerable to the unknown rate increases. The Attorney General argued that the Commission cannot approve such an open-ended process without violating the PUA's requirement that it only allow rates that are just and reasonable. See 220 ILCS 5/9-101.

### **Commission Analysis and Conclusion**

The Commission finds that the Ameren Companies' proposal adopts the appropriate methodology for establishing the starting prices. The Attorney General's position that possible starting bids should be revealed at this juncture is without merit, as the determination of starting bids must consider recent market data, which can only be assessed near the time of the auction. The Commission Staff's involvement in developing the starting price in conjunction with the Auction Manager and the Ameren Companies adequately safeguards consumer interests.

## 3. Bid Decrements

### **The Ameren Companies**

The Ameren Companies proposed a simple formula by which the Auction Manager will decrement the tranche prices, taking into account the amount of excess supply for each auction product. Under the Ameren Companies' proposal, all registered bidders would receive a copy of the price decrement formulas.

The Ameren Companies explained that 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. Resp. Ex. 12.0 at p. 90. The Ameren Companies noted that Staff witness Dr. Salant, however, raises a concern that bidders would 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. The Ameren Companies responded that Dr. Salant's solution to his concern, to withhold bid decrement parameters from bidders, *Id.*, is unwise because 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. However, in response to Dr. Salant's concerns, the Ameren Companies 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.

### **Staff**

Staff recommended that the Commission accept the Ameren Companies' modified bid decrement. Staff also concluded that the Ameren Companies witness LaCasse has provided "a good structure for setting bid decrements," but that "it is expected that decrement formulas would be finalized closer to the auction." Thus, Staff recommended that the Commission direct the Ameren Companies' Auction Manager to consult with Staff in finalizing those formulas, which would be revealed to bidders prior to the auction in an Auction Manual.

### **Commission Analysis and Conclusion**

The Commission concludes that the proposal by the Ameren Companies and Staff to provide price decrement formulas in the Auction Manual in a way that precludes bidders from making inferences about excess supply toward the end of the auction is prudent and reasonable. The Ameren Companies and Staff are attempting to balance two conflicting consequences of providing excess supply feedback: providing too much feedback may empower a bidder to stop the auction prematurely at an elevated price, but providing too little feedback may lead to more timid bidding. The Auction Manager should consult with Staff in finalizing these formulas, which would be revealed to bidders prior to the auction in an Auction Manual.

## **4. Auction Volume Reductions**

### **The Ameren Companies**

The Ameren Companies described how auction volume cutbacks (the process by which the Auction Manager reduces the amount of power acquired in the auction if necessary to ensure a competitive bidding environment) are another of the competitive safeguards included in the Ameren Companies' proposal. Resp. Ex. 12.0, pp. 42-44. However, the Ameren Companies pointed out that 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. The Ameren Companies also pointed out that the

detailed volume reduction formulae must be kept secret from bidders to prevent unfair manipulation of the auction process.

### **Staff**

Staff witnesses Salant and Sibley agree that volume cut-backs provide an important safeguard for the reason specified by Dr. LaCasse—insufficient bidder interest in the auction. ICC Staff Ex. 11.0 (revised), p. 26. Dr. Salant and Professor Sibley initially proposed that the Auction Manager also be provided discretionary volume adjustment power for the purpose of exerting pressure on BGS Suppliers who may have limited options to sell in other markets. However, Staff ultimately agreed with the Ameren Companies that there is no reliable method for discerning the underlying motivation of BGS Suppliers who are withdrawing tranches and, without a practical method of implementing such a proposal, the Auction Manager (or the Staff) should not be imbued with the power to cut back auction volumes unless it is extremely clear that such reductions will benefit ratepayers. Staff noted that Staff and the Auction Manager possess both the right and responsibility, independently, to address questions relating to the competitive process. However, the Commission (rather than the Auction Manager or Staff) should retain a remedy should it find reason, based on the Auction Manager's Report and/or the Staff Report, to question the competitive integrity of the auction process.

### **Dynergy**

Dynergy supported the Ameren Companies' proposal regarding volume reductions and portfolio reductions. Dynergy noted that parties to the auction need to be assured that, absent some pre-defined events occurring, the basic contours of the auction will not vary during the auction itself, and expressed the opinion that the Ameren Companies' proposal best meets that goal.

### **Commission Analysis and Conclusion**

The Ameren Companies' proposal to allow for volume reductions by the Auction Manager in the event that interest in the auction by BGS Suppliers is not as high as expected best ensures that the auction clearing price reflects competitive prices, with which no party disagreed. Though Staff witness Salant initially recommended that the Auction Manager be permitted to make volume reductions to exert pressure on BGS Suppliers, Staff ultimately concluded that the Auction Manager would not possess sufficient information to make an informed judgment regarding BGS Supplier motivations, and that the Commission is best suited to construct a remedy if the competitive integrity of the auction is called into question. The Commission concurs.

## **5. Portfolio Rebalancing**

### **The Ameren Companies**

As a counterpart to the auction volume reduction guidelines, Dr. Salant recommended 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.” Staff Ex. 1.0, p. 60. Dr. Salant’s proposal was intended to avoid the situation where one product is very competitive while another is not. However, the Ameren Companies testified that Dr. Salant’s recommendation does not improve the auction process and likely would be harmful to that Process. Resp. Ex. 12.0, p. 59. The Ameren Companies pointed out that the Auction Manager cannot evaluate relative interest among products at an arbitrary moment in time and bidder interest evolves as the auction progresses. *Id.* The Ameren Companies argued that 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.*

### **Staff**

Staff recommended that the Commission authorize the Company's Auction Manager to utilize the portfolio rebalancing option after consulting with the Staff and there is consensus between the Auction Manager and Staff that such action is appropriate, provided that the Ameren Company's Auction Manager, in consultation with the Staff and the Auction Advisor, can devise prior to the auction a protocol deemed appropriate by the Auction Manager for carrying out such portfolio rebalancing.

### **Dynegy**

Dynegy supported the Ameren Companies' proposal regarding volume reductions and portfolio reductions. Dynegy noted that parties to the auction need to be assured that, absent some pre-defined events occurring, the basic contours of the auction will not vary during the auction itself, and expressed the opinion that the Ameren Companies' proposal best meets that goal.

### **Commission Analysis and Conclusion**

The record demonstrates that the volume reduction proposal to readjust the individual auction product volumes, increasing volume for products with excess supply and decreasing it for products with limited supply offers (*i.e.* portfolio balancing), should be rejected, as it is likely to be harmful to the auction process.

## **6. Association and Confidential Information Rules**

### **The Ameren Companies**

The Ameren Companies testified that another of the competitive safeguards in their proposal is the Association and Confidential Information (previously defined as “A&CI”) rules. The Ameren Companies explained that the rules ensure the independence of bidders, prevents collusion among bidders, and prevents any one bidder from gaining advantage in the auction through better information about its competitors coordination

among bidders are minimized. Resp. Ex. 12.0 at p. 7. 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.*

### **Staff**

Staff agreed that there should be an appropriate set of AC&I Rules within the framework of the proposed auction. However, Staff witness Salant suggested that bidders be required to disclose any full-requirements agreements with wholesale suppliers that are contingent on the outcome of the auction. ICC Staff Ex. 11, p. 41. However, Staff recognized that there are reasonable arguments against requiring additional disclosure of full-requirements contract information. Considering the real potential for some negative unintended consequences from its proposal Staff did not recommend that the Commission order the Ameren Companies to modify the association and confidential information rules.

### **Commission Analysis and Conclusion**

The Commission finds that the AC&I rules proposed by the Ameren Companies ensure the independence of bidders, prevent collusion among bidders, and prevent any one bidder from gaining advantage in the auction through better information about its competitors, and therefore should be approved.

## **7. Tranche size**

### **The Ameren Companies**

Under the Ameren Companies' auction proposal, each tranche will account for a fixed percentage of a specific load group. Resp. Ex. 6.0, p. 54. The Ameren Companies expects the number of tranches for each category will be set so that the maximum size of each tranche (counting all customers on the Ameren Companies 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. The Ameren Companies testified that the 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**

Staff witness Dr. Salant specifically recommended the 50 MW tranche as being set at the appropriate level. ICC Staff Ex. 11.0, p. 16. Since no other parties took issues with the tranche size proposal, Staff recommended approval of the 50 MW tranche size.

### **Commission Analysis and Conclusion**

The record supports the Ameren Companies' proposed tranche size of approximately 50 MW.

## 8. “Price-taker” proposal

### **The Ameren Companies**

Dr. Salant proposed 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. 1.0, 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 Ameren Companies argued that 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.* Moreover, the Ameren Companies testified that the price-taking option likely will deter auction participation, *Id.* at p. 49, and smaller or newer BGS Suppliers could perceive the price-taking option as a barrier to entry. *Id.*

### **Staff**

In Staff’s view, the price taker option is unlikely to have much of an effect on the auction, either a positive or a negative effect. Furthermore, Staff explained that since BGS Suppliers can also sell their power to other bidders or into the PJM organized markets, or in other bilateral markets, the price taker option is not necessary for consumers to gain access to low-cost producers’ power. Staff did not recommend that the Commission order the Company to incorporate the price taker option into the auction, as proposed by Dr. Salant.

### **Commission Analysis and Conclusion**

The open auction process is essential to maintain the auction’s ability to encourage wide participation to achieve low market prices for customers. The record demonstrates that the price taker feature would jeopardize these fundamental advantages of the auction. Accordingly, the Commission rejects Staffs proposal.

## D. Clearing Price: Uniform vs. Pay-as-Bid<sup>12</sup>

### **The Ameren Companies**

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<sup>12</sup> The pay-as-bid pricing structure was not proposed in the Dockets 05-0160, 05-0161, and 05-0162 (cons).

The Ameren Companies testified that 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 Ameren Companies noted that the payments made to BGS Suppliers will be based on the final auction clearing price for each product.

### **Attorney General**

The Attorney General proposed alternative acquisition methods that might lead to non-uniform prices being paid to bidders. The Attorney General argued that multilateral negotiations, or a reserve price in an auction, or other alternative pricing, are better suited to capture the different cost structures that exist.

### **Staff**

Staff agreed with the Ameren Companies that the Attorney General's proposal fails: (1) to relate his theories to the actual market in question, (2) to address practical issues, and (3) to provide a workable alternative for the Commission to consider in this docket. Therefore, Staff recommended that the Ameren Companies' final price proposal be accepted.

### **Commission Analysis and Conclusion**

The record is devoid of any tangible benefits that would result from the unproven pay-as-bid modification, or the multilateral negotiation or price caps approach. However, significant disadvantages have been identified that would result through the use of such approaches. Accordingly, the Commission rejects the alternative theoretical untested approaches in favor of the descending clock auction.

#### **E. Auction Management**

The Ameren Companies' proposed several key entities for the final development, operation and management of the auction: 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**

The Ameren Companies' proposed to engage an independent Auction Manager to actively manage the auction process and be the sole interface between the bidders and the auction, performing a wide variety of functions necessary to successfully complete the procurement process. Resp. Ex. 10.0, p. 16. The Ameren Companies and Com Ed jointly proposed that Dr. Chantale LaCasse be retained for that purpose. *Id.* The Ameren Companies noted that Dr. LaCasse is recognized as an expert on auctions, has extensive experience in this area, and has acted as Auction Manager for each of the

New Jersey Basic Generation Service auctions. *Id.* The Ameren Companies pointed out that 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. The Ameren Companies stated that 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. The Ameren Companies stated that 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.

### **Staff**

Staff reviewed Dr. LaCasse's qualifications and was satisfied that she is competent to be the Auction Manager. However, Staff claimed that it had concerns over the independence of the Auction Manager, as both ComEd and the Ameren Companies have affiliates who are engaged in the sale of wholesale power and who could be bidders in the proposed auctions. Staff asserted its belief that retail consumers generally want low, stable prices and service reliability, and its desire that the Auction Manager embrace these goals. Staff further asserted, however, the Ameren Companies could have a conflict of interest. Staff alleged that the Auction Manager would be working for two bosses with opposing incentives: one (the Ameren Companies) that has no particularly strong incentives but at least a duty to get low prices for its retail customers; and another (Ameren Corporation) that has an incentive to get high prices for its generation and marketing affiliates participating in the auction. Staff therefore suggested that the Commission should appoint the Auction Manager, or the Auction Manager's discretion with the Ameren Companies' affiliates should be limited. However, since the Ameren Companies has proposed measures to insure the independence of the auction manager, and Staff will be able to monitor and provide input on the various Auction Manager functions, Staff recommended that the Commission approve the Ameren Companies' proposal to hire an independent Auction Manager.

### **Commission Analysis and Conclusion**

The record shows that having an independent, third-party Auction Manager would be advantageous in numerous respects. In addition, the record makes clear that Dr. LaCasse is highly qualified to hold such a position, particularly in light of her significant experience in the New Jersey auctions. The Commission, therefore, concludes that

ComEd and the Ameren Companies should jointly retain Dr. LaCasse for the role of independent, third-party Auction Manager. In addition, the record demonstrates that the Ameren Companies' proposal for the Auction Manager, as modified in response to Staff's concerns, is just and reasonable. The Commission therefore approves such proposal, as modified.

## **2. Role of Ameren Companies**

### **The Ameren Companies**

The Ameren Companies stated that there will be limited communication between the Auction Manager and the Ameren Companies once the auction begins. Resp. Ex. 10.0 at p. 17. The Ameren Companies will receive no more information during the auction than the BGS Suppliers bidding in the auction receive. *Id.* The Ameren Companies testified that these limited communications will occur only to the extent expressly permitted in the auction rules and other auction documents, and, crucially, no representative of the Ameren Companies will be "in the room" while the auction is in process. *Id.* at p. 18.

### **Staff**

Staff expressed concern about the possible conflict of interest between the Ameren Companies and Ameren Corporation. However, Staff agreed that the absence of the Ameren Companies representatives "in the room" substantially addressed this issue. With this restriction—along with the measures to limit the discretion of the Ameren Companies-employed Auction Manager and to reinforce the independence of the Auction Manager—Staff believes that the role of the Ameren Companies in the auction have been satisfactorily narrowed to minimize undue influence over the auction, notwithstanding the conflict of interest problem with which the Commission has been confronted in this case. Furthermore, Staff believes that the Commission has relatively wide latitude to prescribe the form of the auction and any safeguards deemed warranted, provided such dictates are consistent with the record evidence and governing laws.

### **Commission Analysis and Conclusion**

It is important that the Auction Manager function independently of any particular party, so as to maintain the fairness of the auction and to keep it free of any bias. As noted above, the Ameren Companies have agreed to certain measures to help promote that independence. The Commission therefore approves the Ameren Companies' proposed level of involvement in the auction process.

## **3. Role of Staff**

### **The Ameren Companies**

The Ameren Companies proposed that Staff play a key role leading up to and administering the proposed auction. Before the auction, the Auction Manager would

coordinate with the Staff the finalizing of auction documents and methodologies. Representatives of Staff would 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 would issue a report to the Commission. *Id.* The Ameren Companies also proposed that Staff hire an Auction Advisor to assist the Staff in observing the Auction Manager's implementation of the auction process. *Id.* at p. 16-17. The Ameren Companies also proposed that the Staff and the Auction Manager each independently submit auction reports to the Commission by the end of the business day following the end of the auction.. Resp. Ex. 11.0 (revised), p. 54. The Ameren Companies pointed out that his 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 pp. 57-58.

### **Staff**

Staff witness Zuraski concurred with this proposed role for the Staff in observing and assessing the auction. Staff witness Salant, while proposing some minor modifications to Mr. Blessing's suggested Staff Report outline, agreed that "Respondent Ex. 11.2 provides a good starting place for defining the contents of the Staff Report that will be made available the day following the auction conclusion." ICC Staff Ex. 11.0 Corrected, p. 48. The Ameren Companies then provided a revised set of suggestions for the Staff Report outline with its surrebuttal testimony. Resp. Ex. 19.5. As a result, Staff believes that the details of the Staff Report outline have been adequately resolved.

### **Commission Analysis and Conclusion**

The record shows that Staff will be actively involved in all parts of the auction process, which will help ensure the protection of consumers. The record also shows that Staff's post-auction reports will be useful for independently assessing the fairness and appropriateness of the auction, for helping ensure its competitiveness, for addressing issues, and for considering potential improvements. The Commission, therefore, approves the proposed full involvement of Staff in the auction process, including its issuance of a post-auction report in the form of the revised outline.

#### **4. Representation of Consumer Interests / Separate Consumer Observer**

### **The Ameren Companies**

The Ameren Companies noted that CUB proposed 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. The Ameren Companies point out that the proposed that the Consumer Observer have special access to the auction process and report its

conclusions to the Commission and would monitor seemingly every aspect of the Auction Manager's duties. Resp. Ex. 10.0, p. 20.

The Ameren Companies testified that 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. Moreover, the Ameren Companies pointed out that 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. Increasing the number of people with access to the confidential information will increase the likelihood of a leak (intentional or otherwise). *Id.*

### **Staff**

While Staff indicated that it is willing to accept the responsibility for observing and assessing the auction as a neutral party, which Staff believes is in the best interest of consumers, Staff took no position with respect to the CUB proposal for an additional consumer observer.

### **CUB**

CUB proposed 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 proposed that the Consumer Observer have special access to the auction process and report its conclusions to the Commission and would monitor seemingly every aspect of the Auction Manager's duties. Resp. Ex. 10.0, p. 20. CUB proposed 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.

### **Commission Analysis and Conclusion**

Staff has extensive experience and expertise in working to protect customer interests. The auction process envisions a full and active role for Staff in providing such a function, and Staff has indicated its willingness to perform it. In light of the broad range of this function, including the provision of post-auction reports and recommendations, the Commission concludes that there is no reason to establish a separate consumer advocate.

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

### **The Ameren Companies**

The Ameren Companies stated that it is their 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. Resp. Ex. 10.0, p. 14. The Ameren Companies proposed that the first

joint auction with ComEd be held sometime within the first ten (10) calendar days of September 2006. *Id.* The Ameren Companies pointed out 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.*, and noted that several potential BGS Suppliers have supported a September auction date. Nelson Tr., pp. 189-190. These suppliers wanted a September (versus May) auction because a September auction would be closer to the delivery date and holding an auction in September will reduce the time premium that the BGS Suppliers would have to account for in their auction prices. *Id.*

## **Staff**

Staff emphasized the need for a joint auction that would procure supply for the customers of CornEd and the Ameren Companies at one time. ICC Staff Ex. 11.0, p. 7. As a result, Staff supported ComEd's and the Ameren Companies' agreement to hold the auction in the first ten days of September 2006, even though Staff had initially proposed July 2006. ICC Staff Ex. 11.0, pp. 12–14. In expressing this support, Staff noted that such a date would give the Auction Manager the maximum time after entry of the Order in this proceeding to complete the necessary pre-auction tasks, including testing of, and practice with, the software that bidders and the Auction Manager will use during the auction. Staff also noted that it would be preferable to spend more time ironing out any problems upfront rather than, as CES suggests, scheduling the auctions at an early date and leaving September 2006 as a fallback date. In addition, Staff recommended that the Commission find that the Ameren Companies should have a contingency plan ready to present to Staff and the Commission in the event that the auction results are rejected. Staff Ex. 13.0, p. 16.

## **CCG**

CCG witness Smith testified in his Direct testimony that a May auction would be better because it would provide “sufficient time, subsequent to the initial auction, for the utilities, winning suppliers and the Midwest ISO and PJM to ensure that all of the operational details associated with providing service...are in place.” CCG Ex. 1.0, II, 128-132. Notwithstanding its preference, CCG does not object to a simultaneous September auction, but prefers a May auction. CCG Ex. 2.0, lines 35-43.

## **CES**

CES argued for a May 2006 date for the initial auction. CES Ex. 1.0, p. 6. CES claimed that an auction scheduled for May 2006 could be delayed until September 2006 to allow time for the Auction Manager to address problems that may arise. CES Ex. 1.0, p. 10; CES Ex. 2.0, p. 4. CES also claimed that an earlier auction date would allow customers under 1 MW additional time to evaluate their supply options. CES Ex. 1.0, p. 10. CES conceded that it might be reasonable for the initial auction be held in September 2006 – though CES claimed that there are no technical reasons to wait and that waiting would not increase price accuracy. In addition, CES argued that by setting a May 2006 initial auction date, “the Commission will be encouraging all parties to define the post-transition rules of the game, thus bringing more certainty to the environment for customer decision-making.” CES Ex. 1.0., p. 11.

## **IIEC**

IIEC favored a September 2006 auction, conducted simultaneously with the Ameren Companies' auction. IIEC Ex. 3.0, p. 5. IIEC pointed out that such timing would provide more time to lay the groundwork for the auction process, and that holding the auction closer to the time of physical delivery would yield a more accurate price. IIEC Ex. 6.0, p. 3; Tr. 160. IIEC also noted that all parties but one appeared either to support or not to oppose a September 2006 date. IIEC stated that there was no compelling reason for advancing the initial auction to a point in time more than one-half year before the winning bidders would be required to supply power, with the concomitant increase in risk and price. In addition, IIEC noted that a May 2006 initial auction date would cause bidders to split their efforts between preparing supply arrangements for the summer peak season in 2006 and preparing for participation in the Illinois auctions, while a September 2006 initial auction date would allow bidders to focus their efforts on a single task -- preparing bids for the Illinois auction. IIEC Ex. 3.0, p. 4.

### **Commission Analysis and Conclusion**

The record shows that conducting the ComEd's and the Ameren Companies' auctions simultaneously would be beneficial to all concerned parties. The evidence also favors September 2006 over May 2006, as the September date would permit more time to complete various pre-auction tasks and iron out any problems, and would tend to provide more accurate prices, thereby reducing any need for a risk premium to cover a longer period between the auctions and the January 2007 start date. The Commission therefore approves the first ten days of September 2006 as the period for commencing the initial ComEd and the Ameren Companies' auctions.

#### **G. Common Versus Parallel Auctions**

##### **1. Among Fixed-Price Products and Hourly Products**

#### **The Ameren Companies**

The Ameren Companies testified that they 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. The Ameren Companies noted that switching makes sense when the products in the auction are good economic substitutes for one another in the bidders' business plans. *Id.* at p. 66. The Ameren Companies further pointed out that the products in the Ameren Companies' auction are clearly related, Resp. Ex. 6.0, p. 19, and switching between products is, on balance, beneficial. Resp. Ex. 12.0, p. 69.

#### **Staff**

Staff witness Salant praised the approach of combining products within a single common auction. In particular, Staff noted the general efficiency gains and consumer benefits to

the common auction approach (allowing switching or "arbitrage" between products) as opposed to the separate but parallel auction approach. Staff Ex. 1.0, pp. 31-47.

### **Commission Analysis and Conclusion**

The Commission finds that a common auction for fixed-price products and a common auction for hourly products is efficient, and provides additional benefits to consumers as compared with the parallel auction approach. Accordingly, the Ameren Companies' proposal for switching in the auction process is approved.

## **2. Between Fixed-Price and Hourly Products**

### **The Ameren Companies**

The Ameren Companies testified that 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 p. 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.* Therefore, the Ameren Companies argued that 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.

### **Staff**

Based on the eventual concurrence between the witnesses who testified to the issue, and on the fact that no other party opposed the auctioning of the "fixed price" and "hourly" products separately (in parallel auctions), Staff recommended that the Commission approve the combining all of the Ameren Companies and ComEd "fixed price" products in one common auction and all of the Ameren Companies and ComEd "hourly" products in one common auction.

### **Commission Analysis and Conclusion**

The record shows that allowing bidders to switch between fixed price and hourly products in an auction setting would be neither appropriate nor effective. Additionally, the potential benefits of combining the fixed price and hourly price contracts into a single auction are relatively small. Therefore, the Commission accepts the Ameren Companies' approach to product switching, recommending approval of the proposal with fixed price and hourly products to be auctioned separately.

### 3. Between the Ameren Companies and ComEd Products

#### The Ameren Companies

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. Resp. Ex. 10.0, 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.*

#### Staff

Since both the Ameren Companies and ComEd agreed to a common auction for both the Ameren Companies and ComEd fixed-price products, and they agreed to a common auction for both the Ameren Companies and ComEd hourly products, Resp. Ex. 10.0, pp. 2-3, Staff recommended that the Commission approve the proposal to combine the Ameren Companies products with the ComEd products, in order to conduct two common auctions in parallel with each other: (1) a fixed price product auction consisting of several fixed price products; and (2) an hourly product auction consisting of two hourly products.

#### CES

CES does not object to the Ameren Companies' proposition to conduct its auction in parallel with ComEd, but stated that to facilitate BGS Suppliers' ability to switch between the ComEd and the Ameren Companies auctions, there would be symmetry between characteristics of the customer population to be served under the annual and blended products throughout the state. CES Ex. 4.0, ll. 552-67; *see also* Blessing Tr. at 469. However, CES expressed concern over the way in which certain customer classes were treated. CES indicated that the 400 kW to 1 MW customer group in the ComEd service territory has shown greater total switching activity than even the 1-3 MW group in the ComEd service territory and considerably more than that for all the Ameren Companies customers over 1 MW. CES therefore recommended that those ComEd customers be included in the CPP-A auction. CES Ex. 4.0, p. 27.

#### IIEC

IIEC supported the notion of a common auction between the ComEd and the Ameren Companies territories, should an auction process be approved in this case. IIEC expressed that since the load zones would not be bifurcated into two separate auctions lower market clearing prices would result from a joint auction because the auction would be more competitive in both load zones. IIEC Ex. 2.0, p. 4. However, IIEC claimed that disparities such as the lack of a single common deliverability test and the differing nature of the auction segments serve to bifurcate the auctions and tend to make them less competitive. IIEC Ex. 2.0, p. 6. The IIEC argued that the Commission should require

that a separate auction segment be conducted for customers with demands greater than 3 MW (in conjunction with its proposal for ComEd to provide an annual fixed-price product to such customers).

### **Commission Analysis and Conclusion**

The Commission finds that the fixed price and hourly price products of ComEd and the Ameren Companies to be included in the Illinois Auction divided between the Fixed Price Section (within which switching is permitted) and the Hourly Price Section (within which switching is also permitted) should be subject to common auction, as proposed by the Ameren Companies.

#### **4. Common Deliverability Test**

##### **IIEC**

IIEC witness Mr. Dauphinas recommended 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 recommended 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. *Id.*

##### **The Ameren Companies**

The Ameren Companies stated they are not opposed to cooperating with ComEd, MISO, and PJM in a joint effort to implement a “common deliverability test.” However, the Ameren Companies pointed out that 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 Ameren Companies emphasized that the existence of a “common deliverability test” should not delay approval or implementation of the auction. 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.

##### **Staff**

Staff expressed no position on the IIEC's apparent recommendation that the Commission "require ComEd to work with Ameren, PJM and MISO to establish a common deliverability test for capacity resources within the combined MISO and PJM footprint to the combined ComEd and Ameren load zones in Illinois." IIEC Ex. 5.0, p. 8. However, Staff stated that approval of the Ameren Companies' proposed auctions should not be withheld until such a common deliverability test is established, and cited the testimony of numerous witnesses who indicated that there are benefits to a common auction, even if the seams between MISO and ComEd are not completely eliminated.

### **Commission Analysis and Conclusion**

Based on the record, the Commission concludes that approval of the Ameren Companies' proposed auctions should not be withheld until such a common deliverability test is established.

#### **H. Blended, Fixed Price Auction Products**

##### **1. Proposed Blends For Residential and Small Commercial Customer Supply**

#### **The Ameren Companies**

The Ameren Companies proposed that Residential and Small Business ("R&SB") customers with demands under 1 MW will receive a fixed-price service. Ameren Companies initially would 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 proposed to procure supply for 17, 29, and 41-month terms beginning January 1, 2007, for this category of customers. *Id.* Ameren explained that 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. Under this proposed system, 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.* The Ameren Companies explained that 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.*

#### **Staff**

Staff concluded that the weight of the evidence supports adoption of the Ameren Companies' proposal for an annually-revised portfolio of 3-year supply contracts for serving the residential and small commercial customer included in the so-called BGS-FP

segment. In Staff's view, there is no evidence of a better way of obtaining "market-based yet reasonably stable pricing," as articulated by the Ameren Companies witness Blessing. Resp. Ex. 3.0, p. 6. Staff is particularly concerned with proposals to use contracts of less than 1 year, considering such alternatives inconsistent with obtaining price stability. Staff would also be opposed to making significant greater use of long-term contracts, such as 5-year or longer. Such alternatives would be inconsistent with obtaining market-sensitive pricing and could entail significant risk premiums for the reasons fully explained in Mr. Zuraski's testimony. Staff Ex. 12.0, pp. 8-22.

## **CES**

CES expressed general opposition to the Ameren Companies' proposed customer grouping for its blended, fixed price auction product as unreasonable, unjustified, and anti-competitive. CES Br. at 28-29. CES argued that the Ameren Companies' proposal should be more in line with ComEd's. *Id.*

## **DES-USESC**

DES-USESC proposed that residential and small commercial customer supply (customers with annual usage less than 15,000 kWh) would be procured using four quarterly auctions; supply for larger commercial customers (with demands less than 1 MW) would be procured in monthly auctions. DES-USSC Br., at 15-21.

## **Commission Analysis and Conclusion**

The record supports adoption as reasonable of the Ameren Companies' proposal for an annually-revised portfolio of 3-year supply contracts for serving the residential and small commercial customer included in the so-called BGS-FP segment.

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

#### **The Ameren Companies**

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. *Id.* at, 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.*

The Ameren Companies noted that CES witness Dr. O'Connor recommended 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 recommended 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 responded that they 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. Instead the Ameren Companies pointed out that their 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.* The Ameren Companies asserted that 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.*

The Ameren Companies also pointed out that 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 BGS Suppliers to fully understand and quantify the risks associated with some of the products for the smaller group. Resp. Ex. 15.0, pp. 18-21. As a result, bifurcating the R&SB group as Dr. O'Connor suggests might unduly affect the price that comes out of the auction. *Id.* In addition, the Ameren Companies stated that they 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.*

As a result, the Ameren Companies concluded, 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.*

### **Staff**

After reviewing this issue, Staff witness Dr. Zuraski recommended 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." Staff Ex. 12.0, p. 25. However, Staff recommended that, given the relatively low cost of installing the interval meters that would be necessary for the

400 kw to 1MW customers to be carved out of the BGS-FP segment, the Commission should direct the Ameren Companies to begin the process of ensuring that all such customers will have the such meters installed within approximately two years.

## **CES**

CES objected to the Ameren Companies' proposal regarding R&SB customers and argued that Instead, customers with load demands of 400 kW to 1 MW properly should be included in the customer group with those customers with demands over 1 MW in the BGS-LFP annual product auction. See CES Ex. 4.0 , ll. 421-43. the Ameren Companies' response is discussed above.

## **Commission Analysis and Conclusion**

Based on the record, there is no current reason to segregate the 400 kW to 1 MW customers and CES' proposal should be rejected. The product design can be easily adjusted in later auctions if the Commission determines that customized auction products are necessary. 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. The record supports adoption as reasonable of the Ameren Companies' proposal regarding the 400 kW to 1 MW customer class.

### **3. Proposed Monthly and Quarterly Products**

## **DES-USESC**

DES-USESC witness Mr. Steffes recommended a fundamental change to the Ameren Companies' auction product proposal. DES/USESC Ex. 1.0, pp. 8-9. He proposed 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.*

## **The Ameren Companies**

The Ameren Companies responded that 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.

The Ameren Companies argued that 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.* The Ameren Companies testified that holding monthly auctions would be extremely expensive and inefficient, and 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 would be spread over the small amount of energy procured by a monthly auction. *Id.* The Ameren Companies stated that it was 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.

### **Staff**

Staff disagreed with Mr. Steffes' assessment. Staff argued that the Companies' auction proposal places absolutely no restrictions on the ability of customers to switch to alternative retail suppliers and does absolutely nothing to prevent entry of alternative suppliers; nor does it hinder them from offering and providing whatever services they wish to offer. Staff stated that alternative retail suppliers would neither be impeded from "enhancing overall customer service" nor from inventing "new innovative products." From Staff's perspective, Mr. Steffes' proposal would try to give alternative suppliers an artificial advantage over the Ameren Companies' BGS-FP service, simply by degrading the BGS-FP service to a form that is less desirable to customers. As Staff witness Zuraski noted, in a similar context, "utilities should not be purposefully pricing themselves out of the retail market (for example, by offering poorly-designed products)." ICC Staff Ex. 12.0, p. 24. Staff therefore recommended that the Commission reject DES-USESC witness Steffes' proposal that (a) retail customers with annual peak demand under 1 MW and annual consumption over 15,000 kWh should only have access to a monthly-updated the Ameren Companies energy product based on one-month wholesale contracts secured through auctions; and (b) retail customers with annual consumption up to 15,000 kWh should only have access to a quarterly-updated the Ameren Companies energy product based on three-month wholesale contracts secured through auctions.

### **Commission Analysis and Conclusion**

For the reasons given by Staff and the Ameren Companies, the Commission determines that DES-USESC's proposal for monthly and quarterly products would be would be expensive, inefficient, and not practical, and should therefore be rejected.

#### **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

### The Ameren Companies

The Ameren Companies proposed that larger customers (those with loads exceeding 1 MW) 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 would 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 would be 12 months, from June 1 to May 31. *Id.* at pp. 54-55.

The Ameren Companies stated that procuring the BGS-L product separately from the product offered to smaller customers would better align any switching risk premium that bidders may incorporate into their bids with the customer group creating such risk, and the requirement that BGS-L customers remain on that service until the next supply period will help reduce any switching risk premium. Resp. Ex. 3.0, p. 4, lines 79-90.

### DES

DES-USESC proposed that for customers with demands equal to or over 1 MW that have not been declared competitive, the bundled product should be an hourly energy product. See DES/USESC Ex. 1.0, lines 602-04.

### IIEC

The Ameren Companies and IIEC agree that a fixed-price product is needed for customers 1 MW and over because, given the current state of the retail market, customers require this product. IIEC does not believe that having only an hourly energy price option will be a sufficient utility default option for any customer group. IIEC states that a single, price-volatile option does not allow customers to enjoy the full benefits of the available competitive markets. IIEC Ex. 1, p. 4. However, given the importance of a fixed price service to customers in the 1 MW and above group, IIEC recommended that the Ameren Companies' proposal to offer 1 MW and over customers a one-year fixed price product should be approved.

### Commission Analysis and Conclusion

Based on the record, and given the given the importance of a fixed-price service to customers in the 1 MW and above group, the Commission concludes that proposal to serve larger customers is reasonable and should be approved.

## 2. Prequalification of BGS-LFP Load

### IIEC

IIEC witness Mr. Stephens suggested 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 stated that this will “mitigate load risk” and provide greater load certainty to BGS Suppliers. *Id.* Under his proposal, if a consumer wanted their load put into the auction, it must notify the Ameren Companies in advance of the auction date. Mr. Stephens noted that this prequalification is not a commitment to take the ultimate fixed price offer, rather, the prequalification would serve as an “affirmative indication of eligibility.” *Id.* at p. 12-13.

### **The Ameren Companies**

The Ameren Companies responded that a customer's 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.

### **Staff**

Staff had no opposition to this proposal, as it might reduce any risk premium that wholesale BGS Suppliers might consider adding to their bids, and therefore Staff recommended that the IIEC's prequalification proposal be adopted by the Commission.

### **Commission Analysis and Conclusion**

The Commission finds that any "pre-qualification" requirements will introduce unnecessary administrative hurdles to the auction and that therefore IIEC's prequalification proposal should be rejected.

### **3. Demand Charge Component for $\geq 1$ MW Customers**

The Ameren Companies and IIEC have agreed, as shown in the Ameren Companies/IIEC Stipulation, that assuming a declining clock vertical tranche auction is approved, the Ameren Companies will agree to propose to implement a cost-based demand charge in the fixed-price rate design for whatever rate or tariff applies to 3 MW and customers by the third auction, *i.e.*, by the auction contemplated to be held in February 2009, or by the first auction subsequent to the time a capacity market is implemented in the MISO, whichever is sooner in time. Accordingly, IIEC agreed that the Commission need not adopt its recommendation for immediate implementation of a capacity charge in this case.

The Ameren Companies recommended that the Commission endorse the Stipulation and Agreement in full. See Section VII.10 “Alternative proposals re interruptible service” for a full discussion.

## **IIEC**

IIEC also recommended a separate solicitation for the 3 MW and larger customer loads in an auction form at the same time as the other auction segments (although a properly designed RFP could also work). IIEC Ex. 1, p. 12. The Ameren Companies indicated a lack of interest in this segmentation, stating that the Ameren Companies do not intend or expect to replicate their rate books through the auction and a belief that Ameren Companies should behave in a manner consistent with their role as wires companies and not as companies offering a variety of retail generation products to meet specific end-use customer needs. Resp. Ex. 11.0 (Revised), p. 22. IIEC argued that the Ameren Companies has not shown how its proposal would increase costs or otherwise harm the Ameren Companies, the auction process, or other customers. Accordingly, IIEC recommended the Commission approve a separate solicitation for the 3 MW and larger customers as recommended by IIEC.

## **Commission Analysis and Conclusion**

As more fully explained in Section VII.10, the Stipulation between IIEC and the Ameren Companies is reasonable and should be approved.

### **4. Other**

#### **J. Contingencies**

### **The Ameren Companies**

The Ameren Companies proposed contingency plans to 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. The Ameren Companies developed contingency plans for three scenarios: (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.

In the event that the auction volume fails to procure 100% of a BGS auction product, the Ameren Companies propose to 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.*

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

contingency plan under which, 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.

The Ameren Companies also have proposed a distinct contingency plan that would apply if the Commission rejected the auction results. Under this plan, if the auction results are rejected, 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.*

### **Staff**

Staff reviewed the Ameren Companies contingency plans. Staff finds the Companies' proposed reliance on the MISO spot market as their primary supply source under certain contingency scenarios to be appropriate. From an administrative standpoint, spot market purchases would be the most convenient means to purchase electricity, and perhaps also the least costly. Another advantage of using the MISO spot market is that, to the extent that the MISO spot market is competitive, any concern that a large seller might influence the market price would be minimized. ICC Staff Ex. 5.0, p. 17. Similarly, Staff finds the Ameren Companies' choice of a replacement competitive acquisition solicitation process for certain scenarios meeting specified conditions also appears reasonable and appropriate based on a consideration of applicable benefits and costs. Staff concluded that it has no objection to the procurement methods outlined in the contingency plans as proposed by the Ameren Companies.

### **Commission Analysis and Conclusion**

The evidence shows that the proposed volume reduction contingency and the plan to purchase any shortfall from the volume reduction on the spot market is reasonable and necessary. Accordingly, the Commission approves this contingency.

The evidence shows that the supplier default contingency is reasonable and necessary and the Commission therefore approves it.

The evidence shows that the ICC rejection contingency is reasonable and necessary and the Commission therefore approves it.

#### **4. Subsequent Prudence Reviews of Actions in Response to Contingencies**

Staff witness Dr. Schlaf recommended that the Ameren Companies' purchase of electricity outside the proposed auction process be subject to a prudence review. Under his proposal, the Ameren Companies would file a report with the Commission explaining the reasons for purchasing outside the auction. 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. 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.

#### **Commission Analysis and Conclusion**

The Commission finds the proposed language for Rider MV reasonable and determines it should be approved.

## **K. Regulatory Oversight and Review**

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

#### **The Ameren Companies**

The Ameren Companies explained how 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 would: (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 would retain full regulatory oversight regarding DS rates and the DS component of bundled service rates. *Id.* at pp. 24-25. The Commission also would 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 explained that they do not propose to establish rates that are unjust or unreasonable under traditional regulatory standards. Resp. Ex. 10.0, p. 24. The Ameren Companies stated that their proposed 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.* However, the Ameren Companies pointed out that 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.*

The Ameren Companies noted that 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.* *The Ameren Companies* asserted that a prudence review should not be an after-the-fact referendum on whether other parties like the price that resulted from the auction because a prudence review is intended only to determine whether a utility exercised its discretion reasonably. *Id.*

#### **Staff**

Staff noted that the Ameren Companies auction based competitive procurement proposal provides for regulatory oversight and review of the auction proposal, the auction process and the auction results, and the most significant and fundamental review of the Ameren Companies' proposal is the instant proceeding where the Commission will determine whether it is appropriate to approve that proposal based on the evidence and arguments submitted by the parties. Staff stated that it is in this proceeding where the traditional ratemaking decisions pursuant to the Illinois Public Utilities Act will be made, and the numerous issues presented by this filing are discussed in detail in other portions of this brief.

Staff noted that certain Intervenors appear to have concerns regarding the Companies' request for approval of their rider proposal, including a request for a current determination that the rider based rates are just and reasonable. Staff submits that it is totally appropriate to make that fact-based determination in this proceedings. The Ameren Companies' auction based competitive procurement proposal is an open and transparent process that specifies in all material and relevant respects how the Companies will procure power and energy. Staff pointed out that the Ameren Companies have provided all their decision making criteria up-front and embodied that criteria in their tariff filing so as to effectively remove management discretion with respect to its procurement decisions. Although the running of an auction process may result in the independent Auction Manager taking certain actions that could be deemed discretionary, the basis upon which such determinations are to be made have been reasonably specified to the maximum extent possible. Staff asserted that when these facts are considered, it is clear that the record in this proceeding supports the Companies' request for a prudence determination.

### **Attorney General**

The Attorney General claimed that in asking the Commission to approve a "process" for obtaining market based rates, the Ameren Companies are attempting to avoid the responsibility to charge consumers rates that can pass regulatory review to insure they are fair, just and reasonable. The Attorney General asserted that such avoidance and the Ameren Companies' proposal more generally are not legally appropriate because the Commission has to consider actual rates.

### **IIEC**

IIEC contended that the Commission should not commit itself and consumers irrevocably to a procurement process and that there should be a formal process to review the successes and failures of that process and its various components. Thus, IIEC claimed that only a firm schedule of formal proceedings will provide the necessary framework to assure broad stakeholder participation, effective fact gathering and a full record for Commission consideration.

### **CUB**

CUB argued that the auction proposals eliminated the Commission's prudence review authority and removed customer protections.

### **Morgan Stanley**

Morgan Stanley agreed with the recommendations of Staff witness David Salant, CCG witness Michael Smith and the Ameren Companies witness Dr. Chantale LaCasse that during the post-auction review, the Commission should focus on whether the Commission-approved auction process was followed and whether there were any anomalies in the bids or process that would call into question the competitiveness of the auction or face the possibility such risk will require bidders to include a risk premium in their bids. Morgan Stanley stated that if there are no such anomalies, the Commission should be able to confirm the competitiveness of the auction and thus approve the results by the third business day following the Auction Completion Date. Morgan Stanley argued that any review process should be fixed and not open ended.

### **CCG**

CCG supported the Ameren Companies' position with regard to the Commission's auction review.

### **Commission Analysis and Conclusion**

The overwhelming record in this case provides more than enough evidence for the Commission to determine the prudence of the Ameren Companies' proposed process. Having reviewed this record, the Commission concludes that such process is prudent. As discussed in other parts of this Order, the Commission finds that it has the authority to reach this conclusion, and therefore again rejects the Attorney General's legal arguments.

## **2. Post-Auction Commission Review of Results**

### **The Ameren Companies**

The Ameren Companies testified that the proposed Rider MV provides for prompt post-auction consideration of the auction results by the Commission. Resp. Ex. 2.0, p. 25. The Ameren Companies pointed out that 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.* The Ameren Companies explained that 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.*

Ameren further explained that 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.*

### **Staff**

See Section V.K.1 above.

### **CCG**

CCG suggested that the Commission consider adopting a post auction review that is similar to the one adopted by the New Jersey BPU. By defining the scope of the post auction review so that it focuses on ensuring that the Commission's approved auction process is followed and that no "anomalies were found in the bids or process that would call into question the competitiveness of the bids received," CCG argued the potential bidders would have confidence that the auction will result in executed SFCs. CCG Ex. 1.0, lines 145-149. Therefore, CCG urged the Commission to adopt a scope for its post auction review that is similar to that adopted by the New Jersey BPU.

### **Attorney General**

The Attorney General asserted that the proposed post auction review is too rushed and limited to protect consumers. The Attorney General complained that three business days is not enough for the Commission to consider the reports of the auction monitor and the auction manager, and to decide whether to accept or reject the auction, identify problems, and take whatever action it believes is appropriate.

The Attorney General further asserted that the Ameren Companies' alternatives if the auction result is rejected offer no consumer protection or regulatory review, and reduce the viability of post-auction review. The Attorney General claimed that it is unclear what plan would be used in the interim. The Attorney General also contended that the interim measures (e.g., requests for proposal) would not be subject to prudence review by the Commission.

### **CUB**

CUB argued that the auction proposal eliminates the Commission's obligation to perform an after-the-fact prudence review of the resulting auction prices, as well as its obligation to determine whether the rates are just and reasonable. CUB complained that the Auction Manager's report provides a factual summary of the activities and events that occurred during the course of the auction, the resulting prices and the manager's affirmation that the auction rules apparently were followed but not an after-the-fact analysis whether the prices resulting from the auction are fair, reasonable or prudently incurred by Ameren Companies. CUB also complained that the Commission has only three business days from the close of the auction to accept the results, and can reject

the results only if there is unambiguous evidence that the auction process was not followed.

### **Morgan Stanley**

See Section V.K.1 above

### **Commission Analysis and Conclusion**

The record shows that a three business day review period is sufficiently long for the Commission to determine whether to accept or reject the auction results, and if the latter, to begin taking steps to address it. The successful post-auction review process in New Jersey is highly instructive. Moreover, the Commission will have the benefit of the Auction Manager's and Staff's reports providing information and recommendations from parties who were actively and fully involved in the auction process. In addition, because in this docket the Commission has thoroughly investigated and evaluated the auction process that will be used, the Commission will already be starting with significant familiarity with the process. For these reasons, as well as others noted in other parts of this Order, the Commission concludes that the Attorney General's and CUB's allegations of unfulfilled and violated legal duties are without merit. The Commission, therefore, approves the post-auction process set forth in the Ameren Companies' Proposal.

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

#### **The Ameren Companies**

The Ameren Companies committed to a continuous improvement process. To this end, their proposal included 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 would deliver to the Ameren Companies 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.

#### **IIEC**

IIEC witness Collins recommended that, instead of informal workshops, the Commission should hold formal proceedings to consider improvements to the auction process that should occur prior to the next auction, rather than afterwards as proposed by the Companies. IIEC Ex. 3.0., p. 16. Specifically, Mr. Collins recommended that the Commission make a finding in this proceeding that the Commission will evaluate the fundamental structure of the auction process during the formal proceedings. *Id.*

#### **Staff**

Staff has no objection to the Companies' recommendation to establish informal workshops after the conclusion of the auction, rather than establish formal annual

proceedings. The workshops, under the Ameren Companies' proposal, would be sponsored by the Commission, which should alleviate any concern that any party that wishes to comment on the conduct (and the results) of the auction would not have an opportunity to be heard in an open forum. While Staff understands that any tariff proposals that result from the workshops would likely be initiated by the Companies, rather than intervenors, parties would retain their rights to petition the Commission to open proceedings for the purpose of examining the Companies' tariffs or, in fact, for the purpose of evaluating the auction process itself.

## **CES**

CES proposed that the issue of what products should be offered to which customers should be a topic for thoughtful consideration by the Commission in the annual post-auction collaborative effort, along with other issues. CES Ex. 1.0, lines 488-90.

## **Commission Analysis and Conclusion**

In light of our decision to approve a formal proceeding, the Commission will not mandate informal workshops. In each subsequent formal proceeding, a determination can be made as to whether workshops are appropriate.

### **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.

## **Commission Analysis and Conclusion**

The Commission finds the proposal that the Commission should formally review the auction process on a periodic basis -- annually at first then shifting to biennial reviews, reasonable, and that it should be approved.

### **5. Other Processes and Proceedings**

#### **The Ameren Companies**

The Ameren Companies pointed out that the Commission will remain actively involved in the auction proceedings from year-to-year and 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.

## **DES-USESC**

DES-USESC claimed that the Commission should articulate its vision for achieving in Illinois a robust and fully competitive retail electric marketplace and should actively seek out opportunities to promote fair and open competition in the provision of electric power and energy. DES-USESC then claimed that enacting changes that they had identified represented one such opportunity. They argued that "the Commission must keep in mind that the end of this initial transition period is only the beginning step in establishing a competitive retail electricity market." DES/USESC Ex. 1.0, p. 35. They also asserted that the Commission needs to be mindful that nothing it implements in this docket should delay the time when all consumers benefit from a competitive retail electricity market, and thus the Commission should be very wary of locking Illinois into a series of long-term wholesale supply contracts.

DES-USESC also claimed that the Commission could advance retail electric competition by launching a "Customer Choice" initiative in the form of ongoing collaboratives to identify and eliminate barriers to implementing a competitive retail electricity market for all customers.

DES-USESC also asserted that the Commission should immediately initiate an investigation to determine how advanced metering technology could be deployed more widely. *Id.* at 34.

### **Attorney General**

The Attorney General asserted various legal arguments to object to the auction proposal.

### **Commission Analysis and Conclusion**

The Commission approves the various oversight processes that the Ameren Companies are proposing. With respect to DES-USESC's comments about promotion of competition, the Commission is mindful of the goals of the 1997 Restructuring Act, and has been working to implement those goals for years in many ways, including through this docket. In addition, the Commission will consider DES-USESC's ideas for proceedings through normal means. Finally, the Commission has addressed the Attorney General's various legal arguments in other parts of this Order.

## **L. Supplier Forward Contracts**

### **The Ameren Companies**

The Ameren Companies explained that they 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 Ameren Companies explained that 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.*

The Ameren Companies also pointed out that, 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. In addition, the Ameren Companies described how the auction timeline includes a process for reviewing and finalizing the contracts. Resp. Ex. 18.0, p. 14-15.

### **Dynegy**

Dynegy pointed out that the SFC will constitute one of the most important operative legal documents between the Supplier and the Ameren Companies. To ensure that all bidders can develop their bidding strategy based on a known set of SFC terms and conditions and that all potential Suppliers are governed by the same SFC terms and conditions, Dynegy argued that the provisions of the SFCs are to be set in advance of the auctions as an outcome of this proceeding. Making sure those provisions are set appropriately is important because properly designed SFCs can encourage participation by more potential BGS Suppliers and offer the possibility of lower auction-clearing prices, which would directly translate into lower retail prices. DYN Ex. 1.2, pp 39-41.

Dynegy provided a complete revision to the BGS-FP SFC as DYN Ex. 1.1. Dynegy argued that that version should be adopted by the Commission so the Commission can further improve upon the SFCs and create a set of documents that work to everyone's ultimate benefit, especially the retail consumer's.

## **1. Uniformity in General**

### **The Ameren Companies**

The Ameren Companies stated that, where appropriate, the Ameren Companies and ComEd SFCs should be nearly identical. Therefore, the Ameren Companies stated that throughout the regulatory process they 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.

However, the Ameren Companies noted there are 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.

The Ameren Companies proposed a process to review and finalize the SFCs. This process includes a compliance filing and a collaborative effort to ensure the SFCs are as clear as possible while conforming to the Commission's final order.

### **Staff**

Staff recommended a 60-day compliance filing for finalizing the SFCs. A 60-day compliance filing would allow bidders time to provide comments regarding finalizing the SFCs and would also allow the Ameren Companies, ComEd, Staff and the Auction Manager time to consider, respond to and, if necessary, incorporate such comments into the final SFCs.

### **Dynegy**

Dynegy also emphasized the importance of uniform contracts.

### **Commission Analysis and Conclusion**

The Ameren Companies have proposed to utilize uniform supply contracts based on those used in the New Jersey auction. The Ameren Companies has also worked with ComEd to achieve as much uniformity as possible between the ComEd and the Ameren Companies' SFCs. The Ameren Companies has adopted various changes to the supply contracts it is proposing based on various comments of parties in this proceeding as well as based on public meetings with potential BGS Suppliers who would be subject to the contracts. Based on the record, the Ameren Companies have shown that their SFCs are appropriate. The Ameren Companies proposed process for reviewing and finalizing the SFCs after the Commission's final order.

## **2. Credit Requirements**

### **The Ameren Companies**

The Ameren Companies testified that they expect to provide reliable power supplies at reasonable rates tied to market levels and these goals will be jeopardized if any entity is unable to meet its obligations. Resp. Ex. 8, p. 8. The Ameren Companies stated that 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 explains requirements in detail in its brief. Resp. Br., pp. 99-104. The Ameren Companies also described a number of steps they have taken 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. The Ameren Companies testified that these proposed credit quality standards are reasonable. Resp. Ex. 8, p. 6.

The Ameren Companies stated that 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.

## **Staff**

Staff agreed with the Ameren Companies regarding credit provisions in all areas except Section 6.1 of the Ameren Companies' proposed SFCs, which initially allowed the Companies to unilaterally reduce the credit requirements, providing them the flexibility to respond to "significant, unforeseen circumstances ... [in order] to accomplish objectives such as ensuring reliability, dampening price volatility and maintaining market stability". Ms. Phipps testified that since there is no basis to currently assess the reasonableness of unspecified future changes in credit requirements, the Commission should retain the ability to review any such changes after the fact if they do occur. Staff Ex. 15.0, p. 3. Thus, Ms. Phipps recommended that should the Ameren Companies change the SFC credit requirements, within 15 days of the changes in credit requirements, they file a report with the Manager of the Commission's Finance Department and Chief Clerk that identifies the effective date, explains the reason for the change and summarizes any facts and analyses on which the decision to change the credit requirements was based. Staff Ex. 15.0, p. 4. Ms. Phipps also recommended the Ameren Companies clarify whether the SFCs permit the Ameren Companies to restore the credit requirements to their initial level as circumstances permit. Staff Ex. 15.0, p. 3. In response to Ms. Phipps' proposed reporting requirement, the Ameren Companies witness Timothy Moloney proposed eliminating the credit provision from Section 6.1 of the SFCs,

asserting that the Ameren Companies believe that a review by the Commission or Staff would be acceptable in advance of implementing changes to the credit requirements. Resp. Ex. 21.0, pp. 2-3.

Staff objects to the proposal to eliminate this credit provision. Staff found the Ameren Companies' argument for including this credit provision convincing and believes that the flexibility provided by this credit provision could potentially benefit both customers and BGS Suppliers. Moreover, the Companies have not provided any details regarding its proposal to confer with the Commission or Staff before reducing the credit requirements. Staff Cross Ex. 8. Staff believes it would be unwise to rely on a process with so many unknown variables. Thus, the Ameren Companies' proposal to eliminate the credit provision allowing them to unilaterally reduce their credit requirements should be rejected. Moreover, the Ameren Companies should be required to revise their SFCs to clarify that following any reduction in credit ratings pursuant to Section 6.1 of the SFCs, the Ameren Companies may restore the credit requirements to their initial level as circumstances permit.

### **Dynegy**

Dynegy objected to the credit provisions in the Ameren Companies' SFCs. Dynegy objects to the credit provisions because they are not mutual or bilateral, i.e., they are imposed on Suppliers but not on the Ameren Companies. DYN Ex. 2.1 pp. 73-101. Alternatively, if the Commission decided that the overall credit provisions should not be mutual, then Dynegy proposed a number of other changes to the credit provisions. DYN Ex. 2.0 ll.120-94; DYN Ex. 2.1, ll. 102-28.

### **Morgan Stanley**

Morgan Stanley pointed out that, under the SFCs, bidders must meet certain credit requirements established in order to protect the Ameren Companies and its customers against the risks of default by BGS Suppliers. The Ameren Companies allows any bidder to submit an alternate form of guaranty rather than the form of guaranty included with the Ameren Companies' filing. Morgan Stanley testified that according to the Ameren Companies, “[s]uch an alternate form of guaranty, if approved according to the process set forth [in Appendix C of the Part I Application Form], is an option to the . . . standard form of guaranty appended to the [SFCs].”

Morgan Stanley states that the Commission should confirm that New York law may be designated in the alternate guaranty as the choice of law that governs the interpretation of that alternate guaranty approved as described in the Part I Application Form, Appendix C. Morgan Stanley explained that treasury departments of guarantors likely will submit as alternate guaranties their own, strongly preferred standard guaranties. These guarantors' standard forms of guaranty include all of their preferred terms, often including New York governing law, a provision critical to many guarantors. Because virtually every issue regarding the law of guaranties has been handled in New York, most guaranties in any context are governed by New York law. Morgan Stanley asserted that

to encourage wider participation in the auction, then, bidders should be allowed to submit alternative forms of guaranty governed by New York law. Morgan Stanley pointed out that, with respect to their standard offer procurements similar to that proposed by the Ameren Companies, Maryland has required and New Jersey has allowed New York law to govern interpretation of their guaranties and/or alternate guaranties

### **Midwest Generation**

Midwest Generation supported the Ameren Companies' proposal not to include an independent credit requirement ("ICR") in its proposed BGS SFCs. Midwest Generation wished to inform the Commission that this is an important issue for suppliers such as Midwest Generation, and Midwest Generation agrees with the Direct Testimony of the Ameren Companies witness Steven M. Fetter that the absence of an ICR is consistent with standard electric industry practice. See Midwest Gen. Br., p. 11. Moreover, Midwest Generation's position is that an ICR would be too onerous for suppliers and could diminish auction participation without providing added consumer protection. Midwest Generation noted that the consumer protections that Ameren has incorporated into the SFCs, as well as the MISO credit requirement, are sufficient to ensure credit protection for this initial auction, and will provide effective consumer protection without the need for an independent base credit requirement that would impose an unwarranted burden on BGS Suppliers. *Id.*

### **Commission Conclusion and Analysis**

The Ameren Companies have has shown the importance of balanced credit provisions for the protection of the consumers and control of price premiums added into bids by BGS Suppliers due to credit requirements. The Ameren Companies have adjusted the credit requirements based upon the feedback and proposals in this proceeding. With regard to the elimination of Section 6.1, which allows the Ameren Companies to unilaterally reduce the credit requirements and to which Staff has objected, the Commission finds that the Ameren Companies' proposal to eliminate that provision is reasonable and should be upheld. In summary, the record shows that the Ameren Companies' proposed credit requirements are appropriate and should be approved.

### **3. Proposed Clarifications and Modifications Accepted by the Ameren Companies**

#### **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. See *generally* Resp. Ex. 11.0 (revised).

#### **Staff**

The Ameren Companies agreed to modify the several provisions if the SFCs in response to changes proposed by Staff. Staff Br., pp. 112-13.

### **Dynegy**

Dynegy pointed out that over the course of this proceeding, the Ameren Companies accepted without modification a few of the changes proposed by Dynegy. See, e.g., Resp. Ex. 11.0 (revised) pp. 250-52; 400-04 & 409; Resp. Ex. 14.0, pp. 186-90. In most instances, however, Dynegy states, the Ameren Companies either disagreed with Dynegy's position completely or modified Dynegy's language. In these cases, Dynegy continues to believe that its language is superior. DYN Ex. 1.2, pp. 34-37.

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

### **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 in Resp. Ex. 18.0.

### **Staff**

Staff proposed a number of provisions for the SFCs which the Ameren Companies did not accept, as more fully explained in Staff's Brief, pp. 113-142.

### **CCG**

CCG proposed one provision for the SFCs which the Ameren Companies did not accept, as more fully explained in CCG's Brief, p. 18.

### **Dynegy**

Dynegy proposed a number of provisions for the SFCs which the Ameren Companies did not accept, as more fully explained in Dynegy's Brief, pp. 19-30.

### **Midwest Generation**

Midwest Generation proposed a number of provisions for the SFCs which the Ameren Companies did not accept, as more fully explained in Midwest Generation's Brief, pp. 11-14.

### **Commission Analysis and Conclusion**

As stated above, and based on the record, the Ameren Companies have shown that their SFCs are appropriate and the Commission finds that the proposed SFCs are

reasonable and are therefore adopted. The various proposals not accepted by the Ameren Companies and referenced in this Section V.L.4 are hereby rejected.

#### **M. Other Auction Design Issues**

### **VI. PROCUREMENT PROCESSES ALTERNATIVES**

#### **A. Active Portfolio Management**

CUB witness Steinhurst proposed that the Ameren Companies procure power through “active portfolio management.” In Dr. Steinhurst’s view, the decision of how to procure power should be left to the utilities, who may be able to procure power at less than an auction price. The Commission would then do an after-the-fact review to assess the prudence and reasonableness of the utilities’ efforts.

The Ameren Companies opposed Dr. Steinhurst’s proposal. 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, according to the Ameren Companies, 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, the Ameren Companies explained, 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.

The Commission agrees with the Ameren Companies. The portfolio approach endorsed by CUB assumes that the Ameren Companies can do better than a competitive auction. If they do not, the Commission can disallow excessive costs. The Commission sees two principal problems with this. First, the record does not show why the Commission would expect the Ameren Companies to assemble a portfolio at a lower cost than suppliers with their own portfolios who are bidding against one another. Second, neither CUB nor any other party, however, explains how, in the absence of an auction, the Commission would measure or assess the results of the Companies' procurement. Accordingly, this proposal is rejected.

**B. Request for Proposal**

**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.

The Ameren Companies explained that , most importantly, their 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 say 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.

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, Mr. Nelson explained that 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.

The Commission agrees with the Ameren Companies. Any procurement strategy must be grounded in the real world. Neither this Commission nor the Ameren Companies can compel any supplier to sell power to the Ameren Companies at a price lower than that which would result from a competitive auction. Moreover, the Commission notes that it previously ordered the Ameren Companies to competitively source their power, when Ameren acquired CILCO and IP. Nothing has occurred that would dictate a different result and the Commission still expects the Ameren Companies to comply with those acquisition conditions.

#### **D. Other Competitive Procurement Mechanisms**

#### **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: (1) the auction process and (2) its related matters and the rate or tariff requests associated with the filings. With regard to the latter, the Ameren Companies propose 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 is intended to (1) establish the methodology by which there is a translation of the wholesale market prices resulting from a competitive procurement process into seasonal and peak and off-peak values for use in calculating individual supply-related charges in the Ameren Companies' retail tariffs, (2) describe the competitive procurement process for obtaining electric power and energy supply, and (3) account for the seasonal differentiation in payments made to suppliers. (Resp. Ex. 4.0, pp. 5-6).

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 because 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 the 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. Ameren Companies' witness 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 group's responsibility for such costs. This is the same approach that was utilized in New Jersey to develop class rates for retail customers. Ameren Companies' witness Mr. Wilbon Cooper explained in great detail 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 MVAF is intended to ensure that retail customers will pay no more and no less than the actual cost of power supply. 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. The CSF is intended to recover only the incremental cost of contingency supply.

Staff and the Ameren Companies reached agreement that the index for Rider MV should initially be uniform with that of ComEd's competitive procurement tariff. The Ameren Companies reserved the right to change the index, however, as circumstances warrant. (Resp. Ex. 16.0, p. 9.)

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

### **1. Rider MV – Organization**

Rider MV is divided into seven sections: Applicability (27.002), Purpose (27.002) Definitions (27.003), Competitive Procurement Auction Process (27.010), Limitations and Contingencies (27.029), Retail Customers Switching Rules (27.030), and Translation to Retail Charges (27.034). (Rider MV Original Sheet No. 27.) The Ameren Companies explained that Rider MV has four major components: (1) a detailed description of the auction process, (2) the contingency plans for procurement outside of the auction process, (3) the retail rate translation process, and (4) the market value price adjustment methodologies for reconciling the costs of power supply with the retail service revenues for supply service. (Resp. Ex. 4.0, p. 6.) Rider MV also sets forth the retail customer switching rules (Rider MV, Original Sheet No. 27.030.)

### **2. Rider MV – Definitions**

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

The Ameren Companies described 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.

**i. Description of Power Supply Offerings**

The Ameren Companies propose 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. The Ameren Companies' customers will be given a choice between a fixed price product and a real time pricing product for their power supply. Resp. Ex. 5.0, pp. 5-6.

The Ameren Companies propose 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.

The Ameren Companies propose to make 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 propose offering power supply under either Rider BGS or Rider RTP, allowing 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 propose offering a "hybrid" power service under Rider BGS and Rider RTP or, in the alternative Rider RTP only. The Ameren Companies explained that the hybrid Rider BGS and Rider RTP power supply is offered because such 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 Ameren Companies explained that billing for these customers must minimize the opportunity for such customers to place low load-factor load on the system at prices that do not actually reflect market price. Resp. Ex. 5.0, pp. 37-38.

For customers desiring power supply 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 supply. Resp. Ex. 5.0, pp. 38-39.

The Ameren Companies explained that the development of these rate classifications ensures that customers within these classes are homogeneous in load, load characteristics, and metering installations. Resp. Ex. 5.0, p.8. 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 migration; 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) utilizing existing metering installations. Resp. Ex. 15.0, p.14.

**b. Peak and Off-Peak Period Definitions**

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. Staff witness Lazare recommended that the Ameren Companies utilize the period from 10:00 a.m. to 10:00 p.m. 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. The Ameren Companies agreed for purposes of this case to accept Mr. Lazare's proposed on-peak period of 10:00 am to 10:00 p.m. Resp. Ex. 15.0, p.13.

**3. Rider MV – Specification of Competitive Procurement Process**

The Ameren Companies explained that Rider MV provides for an overview of the CPA, which describes the general CPA process, matters pertaining to the CPA participants, CPA documents, the credit requirements required to be met, as well as the CPA timeline. 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**

The Ameren Companies explained that 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.Re

**a. Enrollment Window**

**i. Duration of Window**

## **Ameren Companies**

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 Ameren Companies explained that 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 testified 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.

Ameren witness Mr. Blessing also 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.

In response to CES's contention that extending the enrollment period would give customers more time to consider their options (CES Ex. 1.0, pp. 30-33), the Ameren Companies noted that IIEC, 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.) The Ameren Companies explained that 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.

## **Staff**

Staff contends that it is appropriate to impose a switching restriction in the form of an enrollment period on BGS-L customers, as they have demonstrated a propensity to switch. In its prefiled testimony, Staff recommended 30 days as the duration of the enrollment window. Staff witness Dr. Eric Schlaf presented an option pricing model to estimate the size of the risk premium associated with a longer enrollment period. Dr. Schlaf's analysis 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. Dr. Schlaf also testified that enlarging the enrollment window “. . . would very likely increase the auction clearing price . . .” Staff Ex. 13.0, pp 2-3.

Dr. Schlaf testified that suppliers could be expected to add about 3.2% of the forward price if the enrollment window were set at 30 days; and, for each additional 10 days, that the size of the enrollment window is increased, bidders might be expected to add another 0.4% of the forward price to their bids. Thus, Dr. Schlaf concluded, for an increase in enrollment from 30 days to 75 days, the model shows that suppliers might add about 1.8% of the forward price to their bids. Dr. Schlaf considered the extra 1.8% a significant additional cost. Staff Ex. 13.0, pp. 4-5.

In response to alternative proposals and positions, Staff now contends that an enrollment window between 30 and 75 days, but no longer than 45 days, would balance the competing interests at stake between the parties.

## **CCG**

CCG did not take a position regarding the duration of the enrollment window period, but noted that the duration could impact price. CCG Ex. 1.0, lines 84-88. 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.

## **IIEC**

IIEC supported the Ameren Companies' proposed 30-day enrollment window for customers electing service under Ameren's annual fixed-price product, and indicated that 30 days represents a reasonable balance of the competing interests of offering customers time to make decisions on competitive supply options and keeping the bid price premiums to a minimum. IIEC members, who are 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. IIEC opposed all proposals to expand the enrollment window period, as it would increase risk to potential suppliers and increase auction prices.

## **CES**

CES does not object to the concept of an enrollment window generally, but contends that it should be extended beyond the 30 days that the Ameren Companies have proposed. CES argues that a longer enrollment period is necessary to allow customers to make informed decisions. CES has proposed a 75-day enrollment window, which it argues is “fair and workable.” Alternatively, CES has proposed a 50-day enrollment window, with proposed changes to the Ameren Companies’ proposed customer classifications. CES argues that testimony regarding price increases associated with a longer enrollment period is theoretical, it is unrealistic to expect customers to pre-negotiate contracts before an enrollment period, there are hidden costs associated with a 30-day enrollment window, and a longer enrollment window would allow more time to correct mistakes.

However, CES does agree that market prices will move during the time suppliers hold their bids open (Tr. 205) and they themselves would not hold a price for 75 days. Tr. 208.

## **Commission Analysis**

The evidence is clear that extending the enrollment period results in a premium price for the BGS-LTP product. The record also supports the contention of IIEC and other, that 30 days is sufficient for customers to make an informed decision as to their supply options. In the end, the Commission concludes that there is no justifiable basis for extending the enrollment period beyond 30 days.

### **ii. Opt In vs. Opt Out**

The Ameren Companies originally proposed that customers interested in the BGS-LFP product would need to affirmatively opt in for this particular product.

Staff witness 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. Under Staff’s

proposal, 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 proceeding to accept Dr. Schlaf's recommendation. Resp. Ex. 15.0, pp. 21-22.

#### **b. Other Switching Rule Issues**

The Ameren Companies' proposed switching rules are defined in proposed Rider MV (Original Sheets 27.032 and 27.033). New customers that start BGS-L service after the beginning of the supply must take BGS-L service for the remainder of the supply term. There appears to be no opposition to these other switching rules.

### **5. Rider MV – Limitations and Contingencies**

The Ameren Companies outline in Rider MV 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.

Staff supported the need for a possible prudence review in the circumstance where contingency supplies were being procured. Specifically, the Ameren Companies would be first obligated to provide the Staff with a report explaining the circumstances of the purchase. The Commission could then determine if an investigation was warranted and open a docket for that purpose. Dr. Schlaf had proposed tariff language for Rider MV to implement this proposal. The Ameren Companies accepted the language with a modification in their surrebuttal case, which modification was accepted by the Staff. ICC Staff Br., pp. 170-171.

The Commission finds reasonable the Staff proposal and the revised tariff language put forth by the Ameren Companies.

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

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

#### **CES**

CES recommends 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.

### **Ameren Companies**

The Ameren Companies oppose CES's proposed migration risk factor, on several grounds. First, the Ameren Companies note that there has been little switching by customers in the Ameren Companies' service territories. Resp. Ex. 15.0, p. 19. Therefore, the Ameren Companies believe that there is no justifiable basis on which to establish a migration risk premium for input into the rate prism, and that any number that would be incorporated into the rate prism would be unsupportive and speculative.

Second, the Ameren Companies believe that reliance on ComEd's 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, the Ameren Companies note that CES has not explained why ComEd's switching data is applicable to the Ameren Companies' service territories, and that CES has offered assertions without quantitative analysis.

Fourth, the Ameren Companies explain that their 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 could be incorporated into the rate prism.

### **Staff**

Staff also opposes CES's proposal to implement a migration risk factor, on similar grounds as do the Ameren Companies. Staff contends that CES has not presented evidence to show whether a migration risk factor is appropriate for the Ameren prism, and if it is appropriate, how it should be estimated. Staff witness Lazare testified that there has been no valid determination that a migration risk factor is appropriate for the Ameren Companies' rate prism. Even if such a factor were appropriate, 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. Staff agrees that CES has not provided a reason why it believes that switching data in the ComEd territories could provide a rationale for a risk migration premium in the Ameren Companies' service territories. For these reasons, Staff recommends that the Commission reject CES's proposal.

### **Commission Analysis and Conclusions**

For the reasons offered by Staff and the Ameren Companies, the Commission finds persuasive the evidence that supports opposing the risk migration premium. The Commission acknowledges the testimony of Ameren witness Cooper, to the effect that with the benefit of the first auction, the Ameren Companies and other parties will be in a better position to assess the necessity for such a charge at a later time.

**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 originally proposed use of historical Locational Marginal Prices (LMPs) instead of the forward prices recommended by the Ameren Companies, but, in response to the Ameren Companies' rebuttal testimony, Staff witness Lazare 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. Staff found determinative the Ameren Companies' testimony that LMPs would present a problem because prices in non-summer months have exceeded summer prices over each of the past three years. Staff thus recommends that the Commission use forward energy prices in developing the market energy costs that serve as the foundation for the translation prism. The Commission accepts this recommendation to use forward prices.

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

**Ameren Companies**

The Ameren Companies demonstrated that 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 Ameren Companies stated 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 demonstrated that the SPA costs should be tracked through Rider MV. 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 the 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 Ameren Companies demonstrated the other factor that mandates the tracking of SPA costs in the MVAF is the consistent change in customer consumption levels from month to month. Tr. 226.

The Ameren Companies clarify that 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 Ameren Companies explain as follows: assume the SPA costs are set at \$ 1 million and would be recovered over 10 million units, or kWh; this would result in a 10 cents per kWh charge. Assume further that because of customer switching or a change in the consumption levels, that the number of units or kWh by which to recover the SPA cost is now nine million—the \$1 million in SPA costs are still recovered but over fewer units, and in this instance the charge would be 11.11 cents per kWh.

### **CES**

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. CES proposed that the Ameren Companies recover SPA costs and uncollectibles through Rider MVAF.

### **Staff**

Staff disagrees with CES's proposal to track SPA and uncollectibles through the MVAF. Staff argues that such methodology would result in a mismatch of costs and recoveries from two different periods, and that a true up is unnecessary to recover such costs.

### **Commission Analysis and Conclusion**

The Commission agrees with the Ameren Companies and CES that Rider MVAF is the proper means by which the Ameren Companies should recover their SPA and uncollectible costs. Given their nature, it is imperative that these costs be traced as proposed.

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

##### **a. Accounting Reconciliations**

## **Ameren Companies**

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.

The Ameren Companies did not accept Staff's recommendations that the Remaining Balance Factor (RB Factor) for the MVAF and CSF should include a provision for interest, on grounds that including interest to the RB Factor would add additional complexity and cost to the administration, and unduly require additional record keeping 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.

Staff though continued to maintain that there should be an interest charge associated with contingency supply. In response, the Ameren Companies recommended an approach for reflecting the interest or carrying charges in the CSF 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. This approach would allow the default payment to more closely track the future period for which the contingency power costs are related, providing better matching between the retail power prices and the replacement power supply costs. This results in customers receiving the benefit of better price signals and cost recovery is synchronized. Mr. Mill then proposed that a carrying charge be established that would compute the interest associated with any unrefunded default damages, stating that such interest was appropriate because the Ameren Companies would have use of those funds until they are returned to customers. The accrued interest would be added to the default damage principal and would be amortized over the remaining months on the contingency period. Adoption of this proposal requires the definition of the CPC Factor to be modified and no changes should be made to Factor RB for interest.

Resp. Ex. 23.0, p. 8.

### **Staff**

Staff agreed not to pursue the need for an interest calculation in the RB Factor and in its initial brief also accepted the Ameren Companies proposal as to the manner by which to account for interest in the CSF. ICC Staff Br., p181.

### **Commission Analysis and Conclusion**

The Commission adopts the agreement of Staff and the Ameren Companies, that there be no interest computed with regard to the RB Factor, and agrees with the Ameren Companies' approach by which to calculate the interest associated with the CSF.

#### **9. Rider MV – Subsequent review / Contingencies**

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. 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 Ameren Companies and IIEC also 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.

Other parties had the opportunity to comment on the Stipulation and Agreement; none did so. The Commission believes that its terms are reasonable, and it is hereby accepted.

There were other oversight recommendations proposed by Staff that, as modified by the Ameren Companies, was found to be acceptable by both parties. ICC Staff Ex. 18, pp. 1-3. The Commission agrees with these recommendations as well.

#### **10. Alternative Proposals Regarding Interruptible Service**

In the Ameren/IIEC Stipulation and Agreement, Ameren/IIEC Joint Ex. 1, the Ameren Companies stated their willingness to adopt the IIEC "better alternative" recommendation

as set forth in IIEC Ex. 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. Notably, no other party took an active interest in the matters in dispute between the Ameren Companies and IIEC.

Other parties had the opportunity to comment on the Stipulation and Agreement; none did so. The Commission believes that its terms are reasonable, and it is hereby accepted.

## **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.

Other parties had the opportunity to comment on the Stipulation and Agreement; none did so. The Commission believes that its terms are reasonable, and it is hereby accepted.

### **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 Ameren

Companies' 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.

The Commission agrees with the Ameren Companies that it is more appropriate to consider rate mitigation proposals in the context of the Ameren Companies' upcoming DST rate filings.

In the alternative: The Commission agrees with the Staff and affirms the bill impact proposal and directs the Staff to propose the same bill impact proposal as part of its direct case in the Ameren Companies' delivery service cases. In those proceedings, the parties, including the Staff, will have the opportunity to revisit the parameters of the rate mitigation proposal in light of the proposed delivery service rates, and take into account any other relevant considerations.

2. **Uniform BGS Pricing Across Ameren Footprint, Regardless of Rate Mitigation Proposal**
3. **Rider D – Default Supply Service Availability Charge**
  - a. **Description of Rider D**

There is a disagreement between the 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 the 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 explain, their 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 successes 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 the 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 suppliers for this particular product will not participate in the auction; and, second, the cost for this option is perhaps too high. ICC Staff Ex. 13.0, pp. 6-7. The Ameren Companies reply that 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, in the Ameren Companies view. 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 Ameren Companies believe, 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 Ameren Companies maintain that the Commission should not give way to arguments driven by parochial interests in deciding this particular issue.

### **Commission Conclusion**

The Commission agrees with the Ameren Companies that Rider D is appropriate. We realize the auction process in Illinois is in its infancy, and where appropriate, we should look to other examples for guidance. In this instance the New Jersey model upon which this auction is premised, and is largely supported in this proceeding, utilizes a similar Rider D charge in order to entice suppliers to bid on the RTP product. The Commission finds that in order to ensure that are sufficient bidders for the RTP product, that the Rider D revenue is important and that further, the cost for this option to the larger customers is not significant. Therefore, on balance, the Rider D charges are reasonable. The Commission will revisit this rider charge in later proceedings to assure that it is still reasonable to assess the charge.

4. **"Default" BGS Rate for Large Customers During Initial Open Enrollment Period, Company and Staff BGS-4, Coalition RTP**
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**
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.

The Ameren Companies explained that 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 not productive 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.

The Commission agrees with the Ameren Companies that no investigation is necessary or appropriate at this time. If CES, or any other entity, has any evidence that the Ameren Companies have violated a rule, it may present that evidence to the Commission in a complaint or request for rulemaking.

## **VIII. CONCLUSIONS AND MIXED LEGAL/FACTUAL ISSUES**

### **A. Legality of Rider MV**

For the reasons discussed in Section III and other parts of this Order, the Commission concludes that it has the authority to approve Rider MV and that the evidence shows that Rider MV complies with all applicable legal requirements.

#### **1. The Illinois Ethics Law The Illinois Ethics Law Defines an Ex Parte Communication as:**

Any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-judicatory, investment, or licensing matters pending before or under consideration by the agency.

5 ILCS 430/5-50 (b) (emphasis added)

The Illinois Auction is run by an independent auction manager in accordance with a process specified in a tariff approved by the Commission. The auction is not a matter "pending before or under consideration by" the Commission. In the event that any matters relating to the auction or its results do become the subject of a regulatory, quasi-judicatory, investment, or licensing matter pending before or under consideration by the Commission, the agency will comply with the requirements of the Illinois Ethics Law.

#### **2. Regulation of Public Records**

The regulation of public records provision, 220 ILCS 5/10-101, appears under Article X of the Public Utilities Act entitled: Proceedings Before the Commission and the Courts. Section 10-101 itself begins:

The Commission, or any commissioner or hearing examiner designated by the Commission, shall have power to hold investigations, inquiries and hearings concerning any matters covered by the provisions of this Act, or by any other Acts relating to public utilities subject to such rules and regulations as the Commission may establish. ... Complaint cases initiated pursuant to any Section of this Act, investigative proceedings and ratemaking cases shall be considered "contested cases" as defined in Section 1-30 of the Illinois Administrative Procedure Act (5 ILCS 100/1-30).

220 ILCS 5/10-101

The language of 220 ILCS 5/10-101 applies to "investigations, inquiries, and hearings." In other words, it applies to "contested cases" or other formal proceedings before the Commission.

As previously explained, the auction process is managed by an independent auction manager. It is not an investigation, inquiry or hearing before the Commission. In the event that any matters relating to the auction or its results do become the subject of an investigation, inquiry or hearing, the Commission will comply with the regulation of public records provisions of the law.

### **3. Ex Parte Communications**

The Public Utilities Act states in part that "[t]he provisions of Section 10-60 of the Illinois Administrative Procedure Act shall apply in full to Commission proceedings." 220 ILCS 5/10-103. The Illinois Administrative Procedures Act is limited to contested cases before the Commission. The relevant portion of the statute states:

Except in the disposition of matters that agencies are authorized by law to entertain or dispose of on an ex parte basis, agency heads, agency employees, and administrative law judges shall not, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or the representative of any party, except upon notice an opportunity for all parties to participate.

5 ILCS 100/10-60 (a) (emphasis added)

The Illinois Auction is not a "contested case" under the Illinois Administrative Procedures Act. "Contested case" is defined as follows:

"Contested case" means an adjudicatory proceeding (not including ratemaking, rulemaking, or quasi-legislative, informational, or similar proceedings) in which the individual legal rights, duties, or privileges of a party are required by law to be determined by an agency only after an opportunity for a hearing.

5 ILCS 100/1-30

The Public Utilities Act expands the definition of "contested case" to include investigative proceedings and rate cases (see 220 ILCS 5/10-101). However, the Illinois Auction is not an investigative proceeding or a rate case. In the event that any matters relating to the auction or its results do become the subject of an investigative proceeding or a rate case, the Commission will comply with the requirements of 220 ILCS 10-103.

#### **B. Other Conclusions and Mixed Legal/Factual Issues**

All conclusions and mixed legal/factual issues are addressed in other parts of this Order.

### **IX. OTHER ISSUES**

#### **A. Renewable Energy and Energy Efficiency Issues (Not Already Addressed Above)**

##### **The Ameren Companies**

The Ameren Companies explain the CPA is sufficiently flexible to permit incorporation of renewable resource requirements. The Ameren Companies showed that its CPA has this attribute. Resp. Ex. 16.0, p. 16.

##### **Staff**

Staff opposed CUB's recommendation to make renewable and energy efficiency purchases through the auction, contending instead that if such resources are to be procured, they should be so outside the auction. (Zuraski Reb., Staff Ex. 12.0, p. 33) Staff noted that the Commission had recently adopted a policy of encouraging voluntary participation by electric public utilities in a plan to make greater use of renewable and energy efficiency resources, and that therefore it was not necessary for the Commission to make any decisions about purchasing resources in this proceeding. (Zuraski Reb., Staff Ex. 12.0, pp. 33-34)

##### **CUB**

CUB claimed that the Commission should consider Illinois' renewable energy goals when considering the Ameren Companies' procurement proposal, and even if the Commission adopts the proposal, it should retain authority and keep its options open regarding renewables and energy efficiency (Steinhurst Dir., CUB Ex. 2.0, p. 48)

### **Commission Analysis and Conclusion**

The record shows that the CPA is sufficiently flexible to permit incorporation of any renewable resource requirements that might arise at a later time. Such issues, therefore, are not an impediment to the Commission's approval of the Proposal.

#### **B. Additional Other Issues**

CUB suggested that testimony from the Ameren Companies who hold stock of Ameren might be not be objective because Ameren might make a profit if it participates in the proposed auction, and such employees have a personal and professional stake in such potential profit.

This suggestion of possible bias is both unfounded and no reason to reject to discount the testimony. The Commission has long considered the testimony of both utility employee witnesses and witnesses for intervening parties that may have both direct and indirect financial stakes in entities that employ them or retain them, or interests in the policies that they believe in. The Commission evaluates that testimony on the merits, based on the particular witnesses' credibility, the nature of their interest, and the nature of their testimony. Just as the Ameren Companies witnesses may theoretically increase the value of stock options, experts retained by all parties may theoretically benefit financially if the policies they advocate are adopted and/or if their own stature as a testifying witness grows. However, we do not dismiss credible, qualified expert testimony on that basis. Rather, we weigh it based both upon its content and the witnesses' demeanor. Here, absolutely nothing in this record or in the witnesses' demeanor, in general and concerning the option, in particular, suggest that their testimony is anything but objective, or should be discounted. Nor has CUB provided any evidence whatsoever that any of these witnesses did or could have biased his or her testimony. The Commission finds no reason to discount this testimony.

All other issues in this docket are addressed in other parts of this Order.

### **FINDINGS AND ORDERING PARAGRAPHS**

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

- (1) Central Illinois Light Company, Central Illinois Public Service Company and Illinois Power Company are Illinois corporations engaged in the retail sale and delivery of electricity to the public in Illinois, and each is a "public utility" as defined in Section 3-105 of the Public Utilities Act and an "electric utility" as defined in Section 16-102 of the Public Utilities Act ;

- (2) the Commission has jurisdiction over the parties and the subject matter herein;
- (3) the recitals of fact and conclusions of law reached in the prefatory portion of this Order are supported by the evidence of record, and are hereby adopted as findings of fact and conclusions of law;
- (4) The Ameren Companies' competitive procurement tariffs propose a method of setting retail rates based on the Ameren Companies' cost of obtaining, in the wholesale market, electricity required to serve the Ameren Companies' retail customers. The Public Utilities Act expressly encourages that utility service prices to "accurately reflect the long-term cost of such services" and "tariff rates for the sale of various public utility services ... accurately reflect the cost of delivering those services and allow utilities to recover the total cost prudently and reasonably incurred."
- (5) The Commission has authority under Article IX of the Public Utility Act to establish reasonable rates and charges for retail service, including the authority to approve formula-type rates, particularly for costs that fluctuate, as provided for in the Ameren Companies' proposed tariffs. In addition to the Commission's authority under Article IX, express authority to approve Rider MV is also provided by Section 16-111 and 16-112 of the Act. Rider MV comports with the specific authorization provided by Sections 16-111(i) and 16-112(a) to base rates for the electric power and energy component of tariffed service on the market value of that energy. The cost that the Ameren Companies will incur to obtain power and energy to meet its service obligations will be established by a competitive procurement process, and the record shows that process will produce costs that are reasonable in amount. As a result, the costs of power and energy obtained will be prudently incurred, and the Commission concludes that the resulting rates are just and reasonable.
- (6) The competitive procurement process proposed by the Ameren Companies for procurement of power and energy, as modified, is prudent and reasonable, based on the record herein;
- (7) The tariffs proposed by the Ameren Companies in their initial filings, as modified to reflect the findings herein, are just and reasonable, and the Ameren Companies should be authorized to file and put into effect such tariff sheets, as modified; and
- (8) The new tariff sheets authorized to be filed by this Order should reflect an effective date not less than three (3) days after the date of filing, with the tariff sheets to be corrected, if necessary, within that time period, and should reflect an operational date of January 2, 2007.

By Order of the Commission this \_\_\_\_\_ day of \_\_\_\_\_, 2005,

**IT IS THEREFORE ORDERED** by the Illinois Commerce Commission that the proposed tariff sheets to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV, filed by The Ameren Companies on February 28, 2005, are permanently canceled and annulled.

**IT IS FURTHER ORDERED** that the Ameren Companies authorized and directed to file new tariff sheets with supporting workpapers in accordance with Findings (7) and (8) of this Order, applicable on and after the effective date of said tariff sheets and operational on and after January 2, 2007.

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

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

(SIGNED)

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## Exhibit 1

### Comparison of Main Features:

#### ComEd Proposal, Ameren Proposal, and New Jersey BGS Auctions

<b>Product Design</b>			
<b>Feature</b>	<b>ComEd</b>	<b>Ameren</b>	<b>New Jersey</b>
<b>Name of Auction Process</b>	<b>Illinois Auction</b>	<b>Illinois Auction</b>	<b>New Jersey BGS Auctions (BGS-FP Auction and BGS-CIEP Auction)</b>
<b>Load Categories</b>	<ol style="list-style-type: none"> <li>1. Residential and smaller 0 – 400 kW</li> <li>2. Large commercial and industrial (service not declared competitive, not self-generating, 400 kW+ )</li> <li>3. Larger customers whose service has been declared competitive</li> </ol>	<ol style="list-style-type: none"> <li>1. Residential and small business (0 – &lt; 1 MW)</li> <li>2. Large commercial and industrial (1 MW+)</li> </ol>	<ol style="list-style-type: none"> <li>1. Industrial and larger commercial (1250 kW and over, and some smaller customers on primary voltage)</li> <li>2. Residential and smaller commercial (the remaining 0 – 1250 kW customers)</li> </ol>
<b>Auction products and Term Structure</b>	<ol style="list-style-type: none"> <li>1. CPP-B 1-year, 3-year and 5-year fixed-price products to serve residential and smaller commercial 0 – 400 kW</li> <li>2. CPP-A 1-year fixed-price product to serve large commercial and industrial (not declared competitive 400 kW+)</li> </ol>	<ol style="list-style-type: none"> <li>1. BGS-FP 3-year fixed-price product to serve residential and small business (0 – &lt; 1 MW)</li> <li>2. BGS-LFP 1-year fixed price product to serve large commercial and industrial that do not opt for BGS-LRTP</li> </ol>	<ol style="list-style-type: none"> <li>1. BGS-FP 3-year fixed-price product to serve residential and smaller commercial (0 – 1250 kW)</li> </ol>

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	<ol style="list-style-type: none"> <li>3. CPP-H 1-year hourly price product to serve larger customers whose electric service rate has been declared competitive, other customers who elect real-time pricing, and certain types of self-generators</li> </ol>	<ol style="list-style-type: none"> <li>3. BGS-LRTP 1-year hourly product to serve large commercial and industrial</li> </ol>	<ol style="list-style-type: none"> <li>2. BGS-CIEP 1-year hourly product to serve Industrials and other commercials (over 1250kW)</li> </ol>
<b>Supplier responsibilities</b>	<ol style="list-style-type: none"> <li>1. Full requirements</li> <li>2. ComEd transfers Load Serving Entity (LSE) responsibility to suppliers via Declaration of Authority</li> <li>3. Supplier is responsible for providing and paying for ancillary services</li> <li>4. Supplier is PJM transmission customer and provides transmission service. Under the Declaration of Authority, ComEd retains the obligation to pay for those transmission services identified in Appendix C of the Supplier Forward Contract</li> <li>5. Supplier must be PJM Market Buyer and Market Seller and sign RAA West</li> </ol>	<ol style="list-style-type: none"> <li>1. Full requirements</li> <li>2. Ameren Companies retain LSE responsibility</li> <li>3. Ameren Companies provide ancillary services but supplier is responsible for payment</li> <li>4. Ameren Companies provide and pay for MISO transmission services</li> <li>5. Supplier must be MISO Market Participant</li> </ol>	<ol style="list-style-type: none"> <li>1. Full requirements</li> <li>2. Supplier is LSE</li> <li>3. Supplier is responsible for providing and paying for ancillary services</li> <li>4. Supplier is PJM transmission customer and provides transmission service</li> <li>5. Supplier must be a PJM member in good standing</li> </ol>

<b>Customer Enrollment windows and switching rules</b>	<ul style="list-style-type: none"> <li>Residential and small business customers (0-400 kW) can take service from a RES at any time. If they return, they have a one-year minimum stay</li> <li>Larger commercial customers (400 kW+ whose service has not been declared competitive) either default to, or have a 45-day window to opt-in to a fixed-price service depending on their prior election (50 days in the first auction)</li> <li>Larger commercial customers opting into fixed price service have a one-year minimum stay</li> </ul>	<ul style="list-style-type: none"> <li>Residential and small business customers (0 - &lt; 1 MW) can take service from a RES at any time. If they return, they have a one-year minimum stay</li> <li>Large commercial and industrial customers taking current bundled service just prior to 2007 will be placed onto fixed price product unless they opt-out during the 30-day enrollment period</li> </ul>	<ul style="list-style-type: none"> <li>No restrictions on residential and smaller commercial customers</li> <li>No restrictions on larger commercial and industrials whose only utility option is hourly service</li> </ul>
<b>Tranche size</b>	<ul style="list-style-type: none"> <li>A tranche of a product is a set percentage of that load category</li> <li>A tranche represents about 50 MW of eligible load</li> </ul>	<ul style="list-style-type: none"> <li>A tranche of a product is a set percentage of that load category</li> <li>A tranche represents about 50 MW of eligible load</li> </ul>	<ul style="list-style-type: none"> <li>A tranche of a product is a set percentage of the load of a utility</li> <li>A tranche for fixed-price service is about 100 MW of eligible load</li> <li>A tranche for hourly service is about 25 MW of eligible load</li> </ul>
<b>Term structure for smaller customers for typical auction</b>	<b>CPP-B</b> <ul style="list-style-type: none"> <li>40% of load at auction each year</li> <li>Rolling terms of one, three and five years</li> </ul>	<b>BGS-FP</b> <ul style="list-style-type: none"> <li>33% of load at auction each year</li> <li>Rolling 3-year term</li> <li>1<sup>st</sup> auction will procure contracts with terms of 17/29/41 months to step into the rolling 3-year term</li> </ul>	<b>BGS-FP</b> <ul style="list-style-type: none"> <li>33% of load at auction each year</li> <li>Rolling 3-year term</li> </ul>
<b>Auction Format</b>			

<b>Feature</b>	<b>ComEd and Ameren</b>	<b>New Jersey</b>
<b>Timing (Initial Auction)</b>	Sept 06 for Jan 07 delivery	Feb 02 for Aug 02 delivery
<b>(Subsequent Auctions)</b>	January 15-31 for June delivery “The descending clock auction is conducted at approximately the same time each year” for June delivery	First week in February for June delivery
<b>How many Auctions?</b>	One. <ul style="list-style-type: none"> <li>• A single Illinois Auction for both utilities.</li> <li>• The Auction has two Sections. The Fixed Price Section is for fixed price products. The Hourly Price Section is for the hourly products.</li> </ul>	Two. <ul style="list-style-type: none"> <li>• One auction for the Fixed Price (BGS-FP Auction).</li> <li>• A second auction for Hourly Price (BGS-CIEP Auction, CIEP for Commercial and Industrial Electric Pricing).</li> <li>• The auctions are separate but run concurrently.</li> </ul>
<b>Can bidders switch across products?</b>	<ul style="list-style-type: none"> <li>• Bidders qualify for the Fixed Price Section, the Hourly Price Section, or both</li> <li>• Bidders in the Fixed Price can switch across all fixed price products</li> <li>• Bidders in the Hourly Price can switch across all hourly products</li> <li>• No switching from fixed-price to hourly price or vice-versa</li> </ul>	<ul style="list-style-type: none"> <li>• Bidders qualify for the Fixed Price, the Hourly Price, or both</li> <li>• Bidders in the Fixed Price can switch across all fixed price products</li> <li>• Bidders in the Hourly Price can switch across all hourly products</li> <li>• No switching from fixed-price to hourly price or vice-versa</li> </ul>
<b>Format</b>	Clock Auction	Clock Auction
<b>Uniform or Pay-as-Bid?</b>	Uniform	Uniform
<b>What is the price?</b>	<ul style="list-style-type: none"> <li>• Fixed Price: An all-in price in \$/MWh</li> <li>• Hourly Price: A fixed charge in \$/MW-day for</li> </ul>	<ul style="list-style-type: none"> <li>• Fixed Price: An all-in price in ¢/kWh</li> <li>• Hourly Price: A fixed charge in \$/MW-day for</li> </ul>

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	capacity, ancillary and transmission services as well as risk management services and renewables	capacity as well as risk management services and renewables <ul style="list-style-type: none"> <li>Starting with the 2006 auction, the price in the Hourly Price auction will be a fixed \$/MWh for the DSSAC (default supply service availability charge)</li> </ul>
<b>Load Caps</b>	<ul style="list-style-type: none"> <li>There is a load cap for each utility in the Fixed Price</li> <li>There is a load cap for each utility in the Hourly Price</li> </ul>	<ul style="list-style-type: none"> <li>There is a load cap for each utility in the Fixed Price</li> <li>There is a statewide load cap in the Hourly Price</li> <li>Starting with the 2006 BGS-FP Auction, there will be both a load cap for each utility in the Fixed Price as well as a statewide load cap in the Fixed Price</li> </ul>
<b>Bidder Interface</b>		
<b>Basic Principle</b>	Auction Manager is sole point of contact with bidders	Auction Manager is sole point of contact with bidders
<b>Auction Manager provides information</b>	<ul style="list-style-type: none"> <li>Clearing house for all bidder inquiries, information requests and comments</li> <li>Manages a web site to provide timely and fair access to information for all bidders</li> <li>Leads information session and training for bidders</li> <li>Provides information to other stakeholders as well, through the web site and through briefings as appropriate</li> </ul>	<ul style="list-style-type: none"> <li>Clearing house for all bidder inquiries, information requests and comments</li> <li>Manages a web site to provide timely and fair access to information for all bidders</li> <li>Leads information session and training for bidders</li> <li>Provides information to other stakeholders as well through the web site</li> </ul>
<b>Auction Manager manages applications</b>	<ul style="list-style-type: none"> <li>Manages qualification and registration of bidders with oversight from Staff (and any expert that Staff may retain for this purpose)</li> <li>Manages application of association and confidential information rules with oversight from Staff (and any expert that Staff may retain for this purpose)</li> </ul>	<ul style="list-style-type: none"> <li>Manages qualification and registration of bidders with oversight from Staff and Board Advisor</li> <li>Manages application of association and confidential information rules with oversight from Staff and Board Advisor</li> </ul>
<b>Auction Manager manages actual</b>	<ul style="list-style-type: none"> <li>Manages round-by-round bid process</li> <li>Sets auction parameters under Staff oversight (and any expert that Staff may retain for this purpose)</li> </ul>	<ul style="list-style-type: none"> <li>Manages round-by-round bidding process</li> <li>Sets auction parameters with oversight from Staff and Board Advisor</li> </ul>

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<b>auction</b>		
<b>Qualification Requirements</b>		
<b>Application Process</b>	<ul style="list-style-type: none"> <li>• Application process is in two parts</li> <li>• Interested parties apply to become qualified bidders</li> <li>• Qualified bidders apply to become registered bidders</li> </ul>	<ul style="list-style-type: none"> <li>• Application process is in two parts</li> <li>• Interested parties apply to become qualified bidders</li> <li>• Qualified bidders apply to become registered bidders</li> </ul>
<b>Part 1: Qualification Requirements</b>	<ul style="list-style-type: none"> <li>• Certify that applicant has no impediments to meeting RTO requirements in the supplier contracts</li> <li>• Provide financial information for an assessment of creditworthiness</li> <li>• Agree to comply with Auction Rules</li> <li>• Accept the terms of the applicable supplier contract</li> <li>• Agree that upon winning, would demonstrate compliance with the creditworthiness in the supplier contract within three days</li> <li>• Pay a bid participation fee</li> </ul>	<ul style="list-style-type: none"> <li>• Certify that they have no impediments to meeting RTO requirements in the supplier contracts</li> <li>• Provide financial information for an assessment of creditworthiness</li> <li>• Agree to comply with the Auction Rules</li> <li>• Accept the terms of the applicable supplier contract</li> <li>• Agree that upon winning, would demonstrate compliance with the creditworthiness in the supplier contract within three days</li> </ul>
<b>Part 2: Registration Requirements</b>	<ul style="list-style-type: none"> <li>• Provide an indicative offer. This is the number of tranches that the applicant is willing to supply at each of the minimum starting price, and the maximum starting price</li> <li>• Provide a financial guarantee in proportion to indicative offer. Amount of guarantee is \$250,000 per (50 MW) tranche at the maximum starting price</li> </ul>	<ul style="list-style-type: none"> <li>• Provide an indicative offer. For Fixed Price this is the number of tranches that the applicant is willing to supply at each of the minimum starting price, and the maximum starting price. For Hourly Price this is the number of tranches that the applicant is willing to supply at the maximum starting price</li> <li>• Provide a financial guarantee in proportion to indicative offer. Amount of guarantee is \$500,000 per (100 MW) tranche at the maximum starting price for Fixed Price; amount of guarantee is \$125,000 per (25 MW) tranche at the maximum starting price for Hourly Price.</li> </ul>

	<ul style="list-style-type: none"> <li>• For applicants to the Fixed Price, depending on the creditworthiness assessment, may be required to provide additional financial guarantees in the form of a Letter of Reference or a Letter of Intent to Provide a Guaranty</li> <li>• Certify compliance with the Association and Confidential Information Rules or provide information disclosures as requested by the Auction Manager</li> </ul>	<ul style="list-style-type: none"> <li>• For applicants to the Fixed Price, depending on the creditworthiness assessment, may be required to provide additional financial guarantees in the form of a Letter of Reference or a Letter of Intent to Provide a Guaranty</li> <li>• Certify compliance with the Association and Confidential Information Rules or provide information disclosures as requested by the Auction Manager</li> </ul>	
<b>Rate Design</b>			
<b>Rate Classes</b>	<p>Groups Residential (blended)</p> <ul style="list-style-type: none"> <li>• Watt-Hour (blended)</li> <li>• Small Load (blended)</li> <li>• Medium (blended)</li> <li>• Large (blended)</li> <li>• Very Large (annual)</li> <li>• Self-Generating (CPP-H)</li> <li>• Competitively Declared (hourly)</li> <li>• Dusk to Dawn Lighting (blended)</li> <li>• General Lighting (blended)</li> </ul>	<p>Simplified structure for FP offerings</p> <ul style="list-style-type: none"> <li>• Fixed Price 1: residential</li> <li>• Fixed Price 2: small commercial 0 – &lt; 150 kW</li> <li>• Fixed Price 3: commercial 150 kW – &lt; 1 MW</li> <li>• Fixed Price 4: large commercial and industrial 1 MW+</li> <li>• Parallel real-time price offerings</li> </ul>	<p>Each of the four utilities has its own rate classes and its own rate design methodology.</p> <ul style="list-style-type: none"> <li>• Customers in rate classes at primary service must take Hourly Price service regardless of size</li> <li>• Rate classes are not harmonized across utilities</li> </ul>
<b>Feature</b>	<b>ComEd</b>	<b>Ameren</b>	<b>New Jersey</b>
<b>Method for Fixed Price</b>	Prism	Prism	Prism

<b>Competitive Safeguards</b>		
<b>Feature</b>	<b>ComEd and Ameren</b>	<b>New Jersey</b>
<b>Load Caps</b>	<ul style="list-style-type: none"> <li>• 35% for each utility in the Fixed Price Section</li> <li>• 35% for each utility in the Hourly Price Section</li> </ul>	<ul style="list-style-type: none"> <li>• Set each year by the utilities. Staff and the Board Advisor review these decisions.</li> <li>• Historically, the statewide load cap for the BGS-CIEP Auction has been set at 33-34%</li> <li>• Historically, the load cap for each utility in the BGS-FP Auction has been set at 33-100%. On a statewide basis the load cap turns out to be 35-38% for each utility in the Fixed Price Section</li> </ul>
<b>Association and Confidential Information Rules</b>	<ul style="list-style-type: none"> <li>• Bidders are asked to make a number of certifications to ensure that they follow these rules</li> <li>• If a certification cannot be made the Auction Manager can ask for additional information. The Auction Manager has several remedies including prohibiting participation</li> <li>• Certification ask to bidder to confirm that it is bidding independently, it has no knowledge of bidding by another entity, and that it will not reveal any confidential information about the process</li> </ul>	<ul style="list-style-type: none"> <li>• Bidders are asked to make a number of certifications to ensure that they follow these rules</li> <li>• If a certification cannot be made the Auction Manager can ask for additional information. The Auction Manager has several remedies including prohibiting participation</li> <li>• Certification ask to bidder to confirm that it is bidding independently, it has no knowledge of bidding by another entity, and that it will not reveal any confidential information about the process</li> </ul>
<b>Volume Reduction</b>	<ul style="list-style-type: none"> <li>• Would follow guidelines established before hand</li> <li>• Volume cutback possible in the first round</li> <li>• Volume cutback possible later in the auction</li> <li>• If a reduction occurs, new volume is set so as to achieve overall a given ratio of tranches bid to tranches available</li> <li>• If volume reduced, EDCs purchase in RTO-administered market</li> </ul>	<ul style="list-style-type: none"> <li>• Would follow guidelines established before hand</li> <li>• Volume cutback possible in the first round</li> <li>• Volume cutback possible later in the auction</li> <li>• If a reduction occurs, new volume is set so as to achieve overall a given ratio of tranches bid to tranches available</li> <li>• If volume is reduced, EDCs purchase in RTO-administered market</li> </ul>

<b>Regulatory Involvement</b>		
<b>Review Process</b>	<ul style="list-style-type: none"> <li>• All stakeholders fully participate in initial auction design docket</li> <li>• Staff monitors all aspects of the implementation of the Auction</li> <li>• Auction Manager briefs Staff at each step of auction process</li> <li>• Auction Manager provides interim report before the auction</li> <li>• Staff and Auction Manager separately present a report on the auction process to the ICC after the auction</li> <li>• ICC decide whether to investigate the auction results</li> <li>• Staff and Auction Manager separately release a public report on the auction process to all stakeholders</li> <li>• ^ Ameren - Formal annual review after first 2 auctions, biennial formal review thereafter.</li> <li>• ^ ComEd - All stakeholders participate in annual auction improvement workshop process. Report on possible improvements presented to the Commission. All stakeholders can participate in proceeding every 3 years to review results and investigate changes</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• All stakeholders fully participate in yearly proceeding</li> <li>• Staff and/or Board Staff participate in all aspects of the implementation of the Auction</li> <li>• Auction Manager briefs Staff and Board Advisor at each step of auction process</li> <li>• Board Advisor and Auction Manager separately present a report on the auction process to the Board</li> <li>• Board decides whether to accept the auction results</li> <li>• Board Advisor releases a public report</li> </ul>
<b>Role of Staff</b>	<ul style="list-style-type: none"> <li>• Reviews and plans promotion of the auction</li> <li>• Reviews bidder application process</li> <li>• Consults with Auction Manager and utilities on setting of starting prices</li> </ul>	<ul style="list-style-type: none"> <li>• Reviews bidder application process</li> <li>• Review utilities' decision on auction prices and load caps</li> </ul>

	<ul style="list-style-type: none"> <li>• Consults with Auction Manager on setting of auction parameters during the Auction</li> <li>• Monitors bidding</li> <li>• Compiles report for ICC</li> <li>• Convenes process improvement workshop</li> <li>• May hire experts as required to assist in any of these functions</li> </ul>	<ul style="list-style-type: none"> <li>• Monitors bidding</li> <li>• Board Advisor prepares auction checklist at conclusion of auctions for Board</li> <li>• Agrees on protocols for conduct of the auction</li> </ul>
<b>Role of Commission / Board</b>	<ul style="list-style-type: none"> <li>• Makes a decision on procurement process</li> <li>• After the Auction is held, decides whether to investigate</li> <li>• Considers recommendations of improvement workshop process</li> </ul>	<ul style="list-style-type: none"> <li>• Makes a decision on procurement process</li> <li>• Decides whether to accept the auction results</li> <li>• Starts a new docket each year to consider suggestions for improvement</li> </ul>
<b>Appointment of Auction Manager</b>	Appointed by utilities	Appointed by utilities
<b>Role of Auction Manager</b>	<ul style="list-style-type: none"> <li>• Manages bidder interface (see above) including qualification of bidders, promotion, training, responding bidder questions, managing web site</li> <li>• Manages bidding and makes round-by-round decisions</li> <li>• Provides interim and final report to the ICC</li> </ul>	<ul style="list-style-type: none"> <li>• Manages bidder interface (see above) including qualification of bidders, promotion, training, responding bidder questions, managing web site</li> <li>• Manages bidding and makes round-by-round decisions</li> <li>• Provides final report to the Board</li> </ul>
<b>Role of Utilities</b>	<ul style="list-style-type: none"> <li>• Provides data for web site and information which the Auction Manager uses to answer questions</li> <li>• Responds to comments on contracts, applications and credit</li> <li>• Makes creditworthiness assessment of bidders</li> <li>• Ensures that financial guarantees are acceptable</li> <li>• Executes supplier contracts</li> </ul>	<ul style="list-style-type: none"> <li>• Provides data for website and information which the Auction Manager uses to answer questions</li> <li>• Responds to comments on contracts and credit</li> <li>• Primarily responsible for load cap and starting price parameters</li> <li>• Makes creditworthiness assessment of bidders</li> <li>• Ensures that financial guarantees are acceptable</li> </ul>

			<ul style="list-style-type: none"> <li>Executes supplier contracts</li> </ul>
<b>Contingency Plan and Cost Recovery Assurances</b>			
<b>Contingency for supplier default</b>	<ul style="list-style-type: none"> <li>Auction, RFP or PJM-administered market</li> <li>Auction if more than 120 days remain and 60 or more tranches needed</li> <li>RFP if more than 120 days remain but fewer than 60 tranches</li> <li>Otherwise replacement is from RTO-administered market</li> </ul>	<ul style="list-style-type: none"> <li>Ameren: Replacement RFP if more than 90 days remain</li> <li>Otherwise, replacement if from RTO-administered market</li> </ul>	At each utility's discretion, the following methods may be employed; competitive bid (RFP or auction), procure at spot, offer tranches to other suppliers.
<b>Cost recovery assurance</b>	Cost of supply acquired through the auction deemed prudent and can be passed into generation service rates along with a cost tracking mechanism to ensure exact cost recovery.	Cost of supply acquired through the auction deemed prudent and can be passed into generation service rates along with a cost tracking mechanism to ensure exact cost recovery.	<ul style="list-style-type: none"> <li>Since auction process is approved by the Board, accepted bids would be deemed reasonable and prudent</li> <li>Utilities ask for Board to recognize prudence of their contingency plans in its Order approving the auction process</li> </ul>

\* Inclusion or exclusion of any similarities or differences does not infer that such similarities or differences do not exist or should be considered immaterial.