

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

CENTRAL ILLINOIS LIGHT	:	
COMPANY d/b/a AmerenCILCO,	:	
	:	
Proposal to implement a competitive	:	No. 05-0160
procurement process by establishing	:	
Rider BGS, Rider BPS-L, Rider RTP,	:	
Rider RTP-L, Rider D and Rider MV	:	
	:	
CENTRAL ILLINOIS PUBLIC	:	
SERVICE COMPANY d/b/a	:	
AmerenCIPS,	:	
	:	No. 05-0161
Proposal to implement a competitive	:	
procurement process by establishing	:	
Rider BGS, Rider BPS-L, Rider RTP,	:	
Rider RTP-L, Rider D and Rider MV	:	
	:	
ILLINOIS POWER COMPANY d/b/a	:	
AmerenIP,	:	
	:	
Proposal to implement a competitive	:	No. 05-0162
procurement process by establishing	:	
Rider BGS, Rider BPS-L, Rider RTP,	:	
Rider RTP-L, Rider D and Rider MV	:	

**REPLY BRIEF OF ILLINOIS INDUSTRIAL ENERGY CONSUMERS**

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## I.

### INTRODUCTION

The industrial companies that have intervened in this case as the Illinois Industrial Energy Consumers (“IIEC” or the “IIEC Companies”) have elected to respond to certain arguments made and positions taken in the Initial Briefs of Central Illinois Light Company, d/b/a AmerenCILCO; Central Illinois Public Service Company, d/b/a AmerenCIPS; and Illinois Power Company, d/b/a AmerenIP (collectively “Ameren” or the “Ameren Companies”), the Staff of the Illinois Commerce Commission (“Staff”), the Coalition of Energy Suppliers (“CES”), Direct Energy Services LLC and U.S. Energy Savings Corp. (“DES-USESC”) and Midwest Generation LLC (“MWG”). IIEC’s failure to respond to arguments made or positions taken by any party in that party’s initial brief, or the failure to respond to any party’s initial brief, should not be considered endorsement or acceptance of the positions taken and arguments made by those parties, unless otherwise expressly stated herein.

IIEC also notes that a number of parties, including, but not limited to, CES, MWG and Staff, cite to testimony and exhibits related exclusively to the Commonwealth Edison Company (“ComEd”) case, Docket No. 05-0159. It was IIEC’s understanding that testimony and exhibits exclusively in the ComEd case were not to be considered part of the record in this case. Therefore, IIEC recommends that, as a matter of fairness, the ALJ and the Commission ignore arguments based on such testimony and exhibits and, as required by law, base its decision solely on matters of record in this docket. (*See* 220 ILCS 5/10-103).<sup>1</sup>

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<sup>1</sup> In some cases, out of caution, IIEC responds to these arguments, so that erroneous statements (though irrelevant to this case) do not stand un rebutted.

## II.

### NEED FOR COMMISSION ACTION

While IIEC did not address the need for Commission action in its Initial Brief and has neither supported nor opposed the auction process itself as a method for procuring power in the post-2006 period, it feels compelled to respond to a particular statement made on this issue by CES in its Initial Brief. CES argues that “it is clear that as a matter of law . . . there is need for the Commission to approve a . . . procurement methodology for Ameren.” (CES Init. Br. at 6). IIEC disagrees that “as a matter of law” the Commission is required to approve, in advance, any Ameren procurement strategy or method. Nor is the Commission, “as a matter of law,” required to approve in advance the justness and reasonableness of rates that may result from the implementation of any Ameren procurement strategy. Whatever the Commission’s decision, it is not required to adopt the Ameren proposal “as a matter of law.”

Indeed, after suggesting that the Commission is required, as a matter of law, to approve a power procurement method for Ameren, CES fails to cite to a single substantive provision of the Illinois Public Utilities Act (220 ILCS 5/1-101 *et seq.* (the “Act” or “PUA”)) that imposes such a requirement on the Commission. Instead, CES argues that because the Ameren Companies were able to divest themselves of generation (220 ILCS 5/16-111(g)), and because the Commission is empowered to investigate the need for restructuring and unbundling tariffed prices (220 ILCS 5/16-109), and because the Commission is required to consider Ameren’s costs of providing tariffed services in setting tariffed service rates (220 ILCS 5/16-111(i)), the Commission is somehow required, as a matter of law, to approve Ameren’s proposal. The alleged legal requirement to approve the power procurement proposal made by Ameren in this proceeding, or to approve any other power procurement method, simply does not follow from those premises.

CES argues further that if the Commission ignores the directives of the General Assembly, *viz.*, authority to divest generation, to investigate rate restructuring, and to use the cost of service to set tariff rates, it would lose “significant authority” to the FERC. (CES Init. Br. at 7). To the extent these specific grants of authority are properly characterized as directives of the General Assembly, the Commission’s failure to adopt, as a matter of law, the Ameren proposal obviously would not affect the Ameren Companies’ decisions to divest themselves of generation, a step they already have voluntarily completed. Nor would it diminish the Commission’s authority to investigate the restructuring of Ameren’s rates or its authority to consider the utilities’ costs in setting rates for tariffed services.

Finally, while the FERC has exclusive jurisdiction over wholesale rates, that jurisdiction does not prohibit the Commission from considering the prudence and reasonableness of the utility’s decision to pay a particular wholesale rate for the acquisition of power supply, if that supply was available from other sources at a lesser or more reasonable price. There is nothing in federal legislation that pre-empts the Commission’s authority to determine the reasonableness of Ameren’s claimed expenses, including the expense of power procurement. The Federal Power Act preserves that authority. *See Pike County Light and Power Company v. Pennsylvania Public Utilities Commission*, (1983) 77 Pa. Comwlth. 268, 465 A.2d 735 at 738. The Commission is empowered under governing case law to review the prudence of Ameren’s actions in incurring FERC-approved charges. Thus, if the utility determines to purchase a particular amount of power from one source at a FERC-approved rate, and lower cost power was available from another source, the Commission still has the authority to determine the prudence of the utility’s action. *General Motors Corporation v. Ill. Com. Comm’n*, (1991) 143 Ill. 2d 407, 574 N.E.2d 650, 658, citing *Pike County Light and Power Co. v. Pennsylvania Public Utilities Commission*

(1983) 77 Pa. Comwlth. 268, 465 A. 2d 735, Mississippi Power v. Moore, 487 U.S. 354 at 373-74, 101 L.Ed. 2d 322, 339-40, 180 S.Ct. 2428, 2440; Nantahala Power and Light v. Thornburg, 476 U.S. 593, 972, 90 L.Ed. 2d 958, 106 S.Ct. 2349, 2359-60. Thus, the Commission has significant authority to determine the prudence of the power procurement practices of any utility subject to its jurisdiction and is not required, as a matter of law, to approve any particular method of power procurement. It would not be deprived of that authority if it properly concludes it is not required, “as a matter of law,” in this instance to approve the Ameren proposal.

In contrast, if the Commission concluded that “as a matter of law” it must approve, in advance, some power procurement and ratemaking approach for Ameren, the Commission most certainly would be depriving itself of significant authority over Ameren’s procurement and ratemaking processes.

#### IV.

#### **SUFFICIENCY OF THE COMPETITIVE MARKET**

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

IIEC explained in its Initial Brief that Illinois customers, particularly large customers, currently are not enjoying the full benefits of available competitive markets due to the very limited number of Retail Electric Suppliers (“RESS”) serving customers in the Ameren territories, as compared to the much greater number of wholesale suppliers expected to participate in the proposed auctions. IIEC also noted that the evidence of record shows that the modest Illinois retail supplier market contracted in 2005, compared to 2004, suggesting an immature and fragile market. IIEC concluded by stating 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.” (IIEC Init. Br. at 10-11).

In their briefs, two other parties -- Staff and CES -- commented on retail market conditions, as they affect large customers IIEC represents. Of these, IIEC will reply only to the Initial Brief of CES on this issue.

### **Reply to CES**

CES claims that “the competitive conditions in Illinois had yielded something on the order of \$1 billion in savings for Illinois’ businesses since passage of the Choice Law.” (CES Init. Br. at 12). This figure is misleading and fallacious, for four reasons. First, the alleged \$1 billion savings figure is essentially a “rounding up” of the \$762 million figure that is shown on CES Ex. 1.11. (See O’Connor Dir. CES Ex. 1.0 at 45:1013-46:1026; O’Connor CES Ex. 1.11).<sup>2</sup> Second, of this \$762 million figure, over \$600 million is associated with ComEd. Hence, approximately 80% of the alleged savings is not even associated with Ameren territories. Third, the figure is also fallacious because it was calculated using mitigation factors that were not even in effect during two years of the five-year time period over which the alleged savings were calculated. Specifically, CES Ex. 1.11 shows mitigation factors of \$6/MWh in calendar years 2003 and 2004 when it should have used \$5/MWh. Section 16-102 of the Act, in the definition of “Transition Charge,” clearly shows that the \$6/MWh mitigation factor did not begin until 2005. Fourth, any savings otherwise achieved by Illinois businesses were due in large part to the

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<sup>2</sup> When citing prefiled testimony in this Reply Brief, IIEC has provided citations to the page number in format of “Page(s):Line(s) or Page:Line-Page:Line.” References to the transcript in Ameren Dockets 05-0160, et al. (Consolidated) will be designated as “Tr. \_\_\_,” references to the Joint Transcripts in ComEd 05-0159 and Ameren 05-0160, et al., will be designated as “Jt. Tr. \_\_\_”. When citing to IIEC testimony, IIEC is referencing the “corrected” testimony placed in evidence on September 6, 2005.

mitigation factor imposed by statute. Thus, the CES figure grossly overstates savings to business customers due to “competition,” in Illinois generally and the Ameren service areas in particular.

CES also claims that the Commission’s approval of a global settlement that certain CES members negotiated with ComEd (not Ameren) in early 2003 “created the conditions necessary for businesses to enter into multi-year retail contracts; enabling businesses, for the first time, to hedge their supply and CTCs for the duration of the transition period, thereby ensuring budgetary certainty.” (CES Init. Br. at 13). The so-called “Global Settlement” had nothing to do with Ameren or its customers and there is no evidence in the record that the “Global Settlement” benefited any Ameren business customers in any way.

CES gives great weight to the fact that the Commission’s website identifies 16 RESs eligible to serve non-residential customers above 15,000 kWh per year as an empirical measure of market success. (*Id.* at 16). CES admits that three of the 16 are not even certified to operate in Ameren territories. Moreover, the mere fact that RESs are listed on the Commission’s website does not necessarily mean that any particular RES is marketing electricity in Illinois, or marketing electricity in any particular utility service territory in Illinois, or marketing to any particular customer segment. This point is obvious from the fact that in 2004, only eight RESs were actually serving non-residential customers in the ComEd territory, only five in the AmerenCIPS territory, only three in the AmerenIP territory, only one in the AmerenCILCO territory, and only one in the AmerenUE territory. (Stephens Reb. IIEC Ex. 4 at 11 fn 4; Stephens Dir. IIEC Ex. 1 at 4:77-80). Stated simply, a list of company names on the Commission’s website does not make a market competitive.

CES also claims that in the ComEd (not Ameren) area, from the summer of 2001 through the summer of 2004, estimated demand in reports to the regional reliability coordinator (Mid-

America Interconnected Network, Inc. or “MAIN”) increased for all but one of the eight RESs shown as load serving entities scheduling deliveries into ComEd. (CES Init. Br. at 17). CES does not mention that one year later, the comparable 2005 source document reported that, for ComEd, half of the listed RESs had actually experienced a decrease in customer demand (including CES member Constellation NewEnergy, which dropped demand by approximately 30%), and that one of the listed suppliers from 2004, Dynegy, had dropped out altogether. (*Compare* IIEC Cross Ex. 1 (2004 MAIN Report), page 9 of 11 and IIEC Cross Ex. 2 (2005 MAIN Report), page 9 of 10).

Notwithstanding CES’s focus on the ComEd area, these same MAIN Reports also cover the Ameren control areas. The AmerenIP control area is segregated from the remainder of the Ameren control area in these reports. For the remaining portion of the Ameren control area, which excludes AmerenIP, RES load dropped by over 20% in 2005, while in the AmerenIP control area, RES load dropped by 25% in the same period. (*Compare* IIEC Cross Ex. 1 (2004 MAIN Report), pages 8 of 11 and 10 of 11 and IIEC Cross Ex. 2 (2005 MAIN Report), pages 8 of 10 and 10 of 10).

Clearly, the competitive retail market in Illinois, especially in the Ameren territories, is not well developed. Even CES agrees the retail market in the Ameren service territories has failed to develop. (CES Init. Br. at 18). Under such circumstances, a fixed price utility product for all customers is needed for the foreseeable future.

Finally, Staff makes an excellent point at page 18 of its Initial Brief. Though not directed specifically at large customers, it does apply. Staff states:

However, it is self-evident 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. Deficiencies in the competitiveness of *retail* electricity markets, in and of themselves, say absolutely nothing about which procurement methods are appropriate for electric utilities to implement.

(Staff Init. Br. at 18, emphasis in original).

IIEC agrees with Staff that given the deficiencies in Illinois' retail competitive market, customers, including large customers, who cannot rely on a competitive retail market in the Ameren service territories should be able to rely on their utility to supply them with electric power.

## V.

### AUCTION DESIGN ISSUES

#### C. Multiple Round Descending Clock Format

##### 1. Load Caps

In its Initial Brief, IIEC opposed imposition of a load cap in the auction process. (IIEC Init. Br. at 12-22). The load cap is an artificial barrier to open competition and supply at the lowest prices. (*Id.* at 12). IIEC opposed Ameren's original proposal for a 50% load cap, and IIEC opposes the greater market intervention represented by the 35% load cap introduced in Ameren's rebuttal testimony. (Ameren Init. Br. at 58). If the Commission finds that Illinois market conditions warrant reliance on auction competition to obtain supplies at the best prices for consumers, there must be a very strong presumption against interfering with that competition. Ameren and other supporters of a load cap have failed to adequately justify this proposed barrier to unfettered competition -- a barrier that will limit supplies from large, low-cost suppliers and potentially raise prices for end users.

Other than IIEC, only Ameren, Staff and MWG addressed this issue in their Initial Briefs. (See Ameren Init. Br. at 58-60; Staff Init. Br. at 32-35; MWG Init. Br. at 6-11). Each of those parties supported imposition of a load cap in connection with any auction the Commission approves. Before even a single auction is held, Ameren and the others have rejected the idea of depending on the competitive wholesale market forces that they assure the Commission will produce just and reasonable outcomes. Instead, they propose to manage the outcomes of the auction competition by imposing a load cap to curtail bids and supplies from large suppliers -- likely low-cost/low-price suppliers -- to the detriment of end-use consumers. (Salant Dir. Staff Ex. 1.0 at 70:1585-1586).

As demonstrated in IIEC's Initial Brief, the evidence and arguments offered to support a load cap are not adequate to justify (a) the likely increase in retail rates for Ameren customers and (b) the certain interference with the operation of competitive markets that is inherent in the imposition of a load cap. (See IIEC Init. Br. at 12-13). The specific arguments presented in the initial briefs of load cap supporters are rebutted in the following discussion.

### **Reply to Ameren**

Ameren asserts that the principal objective of its auction proposal is to obtain reliable supply for its customers at prices that result from competition and reflect the best prices under market conditions. Ameren included a load cap in its proposal, which it claimed would help to achieve this objective. (Ameren Init. Br. at 58). However, Ameren fails to adequately demonstrate that a load cap in the auction will result in the best prices to customers.

The record evidence demonstrates that higher, not lower, consumer rates are likely to result from the imposition of a load cap. That evidence was examined in detail in IIEC's Initial

Brief. (*See generally* IIEC Init. Br. at 12-22). There is the unrebutted testimony -- from load cap proponents and load cap opponents alike -- that a load cap, if it works as designed, will restrict large suppliers. For Ameren customers, “. . . the large suppliers are likely also the low-cost suppliers in Illinois . . . .” (Salant Dir. Staff Ex. 1.0 at 73:1659-1660). IIEC is aware of no record evidence of experience with an auction load cap under the unique set of circumstances that prevails in Illinois. If a load cap excludes low-cost supplies from the auction, as seems inevitable if a load cap is imposed in an Illinois auction, auction prices and prices to consumers cannot be lower, and they probably will be higher. (Collins Dir. IIEC Ex. 3 at 8:148-149).

In maintaining its argument for a 35% load cap, Ameren relies on the testimony of Dr. LaCasse to argue that the question is one of balance -- “a balance of the benefits and costs” in a process where “costs are weighed against the potential benefits.” (Ameren Init. Br. at 59). In that balance, Ameren admits that “[g]enerally, a lower load cap could impose costs in terms of limiting participation . . . .” and that “100% [i.e., no load cap] has the potential benefit of providing additional opportunities for some entities to bid in a greater amount of supply.” (*Id.*, explanation added).

However, after acknowledging the costs resulting from imposition of a load cap that IIEC witness Mr. Collins identified in his testimony, Ameren opines (without any empirical analysis) that “[t]he 100% load cap, suggested by CES [*sic*] witness Mr. Collins, does not achieve . . . balance.” (*Id.*). Ameren argues that its 35% load cap achieves a balance between the costs and benefits of a load cap. (*Id.*).

As IIEC demonstrated in its Initial Brief, Ameren’s alleged benefits are not present, can be achieved by other means, or have not been quantified in a way that permits objective

balancing.<sup>3</sup> (*See* IIEC Init. Br. at 17-20). It is not “beneficial” to limit the participation and influence of large (and likely the most efficient and lowest cost) suppliers. (*See* Salant Dir. Staff Ex. 1.0 at 73:1659-1660; Collins Dir. IIEC Ex. 3 at 10:182). Such a limitation is likely to produce higher prices for end-use consumers of electricity. (Collins Dir. IIEC Ex. 3 at 10:182-184). Nor is it beneficial to have a load cap to prevent gaming of the auction (over-representation of interest) when the load cap may not actually limit that gaming behavior. (*See Id.* at 9:159-173). Finally, load caps are not necessary to limit or to diversify credit exposure, since the auction rules and contracts proposed by Ameren are designed to provide precisely that protection. (Moloney Reb. Resp. Ex. 14.0 at 3:57-65, 5:99-100). Thus, the alleged credit diversification benefit is little or no added benefit at all.

Yet, to secure these uncertain “benefits,” the Commission is asked to impose the unavoidable costs of a load cap -- restrictions on competition, managed auction outcomes, and the increased prices resulting from interfering with the competitive bids of large (low-cost) suppliers. The proposed 35% load cap does not achieve a balance, since it fails to provide the claimed benefits, but unavoidably imposes the costs associated with managing the auction outcomes.

### **Reply to Staff**

Like Ameren, Staff bases its support for an artificial load cap primarily on the testimony of Ameren witness Dr. LaCasse. (Staff Init. Br. at 32-35). Staff also references the testimony of its own retained experts, Dr. Salant and Mr. Sibley. (*See Id.* at 33).

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<sup>3</sup> Though Ameren purports to weigh the costs and benefits of a load cap (to ascertain whether there is “balance”), it has not provided any objective measure of either costs or benefits.

Dr. LaCasse presented four criteria as factors she considered in her balancing of costs and benefits of load caps. (*See* IIEC Init. Br. at 16-17). Dr. LaCasse found that subjective balance in the 50% load cap Ameren originally proposed. (LaCasse Dir. Resp. Ex. 6.0 at 51:1156-1162). She also found subjective balance in Ameren’s revised recommendation of 35%, when it decided to change its proposal and presented the new number to her for evaluation. (LaCasse Reb. Resp. Ex. 12.0 at 34:823-824; LaCasse Jt. Tr. 908). Had other load cap levels been proposed by Ameren, she may have found the same subjective balance in them as well.

As for its own experts, Staff quotes the following testimony of Dr. Salant:

Absent a detailed analysis of the optimal load cap for the Illinois CPP, [sic] I recommend setting the load cap at a level consistent with the levels used in previous SMR format auctions, i.e., in the range of 25 to 35 percent.<sup>4</sup>

(Staff Init. Br. at 34, quoting Salant Dir. Staff Ex. 1.0 at 70:1574-1577, explanation added).

Staff also cites the commentary of Mr. Sibley, its other retained expert. (Staff Init. Br. at 33-34). Ultimately, Staff supports and recommends Ameren’s proposal for a load cap, at a level of 35%. (*Id.* at 35). But, as Dr. Salant candidly acknowledged, the question of the appropriate level for a load cap is a quantitative one -- a question for which neither he nor the Ameren witnesses have conducted any quantitative analysis. (Salant Jt. Tr. 1072-1073; LaCasse Jt. Tr. 908; IIEC Cross Ex. 3 (Ameren responses to IIEC data requests 4-2 and 4-8)).

Absent from Staff’s Initial Brief is any coherent consideration of the effect of a load cap on consumer prices. In fact, Dr. Salant essentially concedes the probability of the adverse consequences that were the subject of Mr. Collins’ caution. (*See* Collins Dir. IIEC Ex. 3 at 8:145-148). Because “the large suppliers are likely also the low-cost suppliers in Illinois,”

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<sup>4</sup> SMR stands for Simultaneous Multiple Round Auctions. (Salant Dir. Staff Ex. 1.0 at 11:243-244).

(Salant Dir. Staff Ex. 1.0 at 73:1659-1660) if a load cap works as designed -- to limit the bids from large suppliers -- the supply excluded from auction will likely be low-cost supply. Given the assurances of load cap proponents (Staff excepted) about the competitiveness of Illinois' wholesale markets and prospective auctions, this unjustified limitation on low-cost supply should not be preferred over unrestricted competition. (*See, e.g.*, Collins Dir. IIEC Ex. 3 at 10:180-184). The interests of consumers should not be inappropriately subordinated to the appearance of diverse, vigorous competition in the auction process -- an objective that load cap advocates believe requires multiple winners. (*See, e.g.*, Ameren Init. Br. at 58; MWG Init. Br. at 7).

In responding to Mr. Collins' testimony, Staff's Initial Brief repeats Dr. LaCasse's mistaken claim that Mr. Collins considered only one of the four criteria she considered in her qualitative evaluation of the quantitative issue of load cap level. In doing so, Staff ignores evidence of record directly contrary to this claim. Mr. Collins addressed all four criteria directly, in his direct and rebuttal testimony. (*See* Collins Dir. IIEC Ex. 3 at 7:123-14:284; Collins Reb. IIEC Ex. 6 at 7:133-10:188).

It appears that in its survey of testimony on a load cap, Staff could find no quantitative support for the quantitative recommendations of load cap proponents. IIEC also has searched the record for something other than opinion and speculation to support the use of a load cap. IIEC submits that such support does not exist in this record. In the absence of any such support, if the Commission finds sufficient competition exists to approve the auction process, the Commission should not endorse the use of a load cap to restrict competition in the auction. To be defensible, a Commission decision cannot simultaneously approve (a) a "market-based" auction that relies on, and (b) a load cap that deliberately distorts, the subject market.

## **Reply to MWG**

MWG asserts that “IIEC’s opposition to a load cap is based on the belief that a load cap might increase costs to consumers by limiting the amount of load that ‘low cost’ suppliers could serve.” (MWG Init. Br. at 7). Its response relies primarily on the subjective conclusions of Ameren witness Dr. LaCasse. (*Id.* at 6). MWG also relies on the mistaken belief that non-utility parties have an obligation to prove that a load cap will have a negative effect, when under the Act it is Ameren that has the burden of justifying its proposal. (*Id.* at 7).

As to MWG’s reliance on the subjective conclusions of Dr. LaCasse, each of the four qualitative criteria she used, in reaching her quantitative conclusion about a proper load cap level, was fully addressed in IIEC’s testimony and in its Initial Brief. (*See* IIEC Init. Br. at 16-20; Collins Dir. IIEC Ex. 3 at 8-14; Collins Reb. IIEC Ex. 6 at 6-11). IIEC’s Initial Brief also revealed the error of MWG’s additional assertions that a load cap will benefit customers by increasing supplier diversity (though not necessarily low-cost supply) and by reducing credit risk (notwithstanding existence of adequate financial assurances in the Supplier Forward Contracts). (IIEC Init. Br. at 19 and 20).

MWG then criticizes Mr. Collins’ illustration of the operation of a load cap as though it were the only evidence of how a load cap would affect customers. MWG argues that “Mr. Collins expressed his belief that a load cap will potentially raise costs by limiting the participation of large low-cost suppliers” and that “[i]n support of this belief Mr. Collins offers nothing more than a hypothetical example.” (MWG Init. Br. at 9).

This is an inaccurate portrayal of Mr. Collins’ written testimony and an incomplete account of his oral testimony. Mr. Collins explained in plain words the limited purpose of his hypotheticals.

The examples that I provided in my testimony **were simply to illustrate the concept of a load cap and do not attempt to portray** a certain bidder, the number of bidders, **the amount of supply** that would be bid into the common auction process, **or the prices** that the **bidders would submit** into the auction.

(Collins Jt. Tr. 149-150, emphasis added).

**My example was very simple and was to illustrate the concept** and was not intended to forecast the conditions that may or may not exist in the common auction process.

(*Id.* 153, emphasis added).

Mr. Collins' hypotheticals also provide the Commission with information on **how** a load cap could affect auction prices and consumer rates. Neither MWG's witness Mr. Graves nor Ameren's Dr. LaCasse made any attempt to estimate or even to illustrate the effects of the proposed load cap, providing only subjective, conclusory opinions. (*See, e.g.*, LaCasse Jt. Tr. 908; IIEC Cross Ex. 3 (IIEC 6.05, 6.06, 6.11)). Unfortunately, this subordination of the interests of customers (in low auction prices and low regulated service rates) to an objective of managing the outcome of an allegedly "competitive market" process is pervasive in the testimony of load cap proponents.

While Mr. Collins' hypotheticals illustrated the flaws in the load cap proposal, they do not constitute the entire proof of those flaws. That proof lies in the record evidence demonstrating that higher, not lower, consumer rates are likely to result from the imposition of a load cap. That evidence was examined in detail in IIEC's Initial Brief. (*See generally* IIEC Init. Br. at 12-22). As previously mentioned, there is the un rebutted testimony -- from load cap proponents and load cap opponents alike -- that a load cap, if it works as designed, will restrict large suppliers. For Ameren customers, ". . . the large suppliers are likely also the low-cost suppliers in Illinois . . ." (Salant Dir. Staff Ex. 1.0 at 73:1659-1660). If a load cap excludes

low-cost supplies from the auction, as seems inevitable if a load cap is imposed in an Illinois auction, auction prices and prices to consumers cannot be lower, and they probably will be higher. (Collins Dir. IIEC Ex. 3 at 10:184-186).

The support of MWG (a major supplier) for a 35% load cap itself lends credibility to IIEC's position that a load cap is likely to raise auction prices. When a supplier, like MWG, has capacity capable of serving more than the load cap amount (35% of auction load),<sup>5</sup> it raises a question: Why would a bidder want to limit its own ability to bid and win auction tranches? The only logical answer is that it expects, likely through higher prices, to profit more under the restricted competition created by a load cap.

MWG (like other load cap proponents) also facetiously asserts that diversity produced by a load cap will lead to lower prices. (*See, e.g.*, MWG Init. Br. at 7; Ameren Init. Br. at 58). However, no load cap advocate explains why or how that magical result will come about; the record contains only bald assertions and uncertain possibilities. For example:

[S]mall and medium-sized suppliers **can be expected to decide** whether it is worthwhile to bear the cost to prepare for and participate in the supply auction **based partly on their expectations** as to the number of tranches they may be able to acquire - expectations which will be diminished without a load cap. Conversely, a lower load cap will **encourage** participation by smaller and medium sized suppliers in the auction. (*See Ameren Ex. 12.0 at 26-27, lines 637-44.*) This increased competitive pressure, in turn, is **likely** to produce a lower auction price.

(*See, e.g.*, MWG Init. Br. at 10, emphasis added).

This is what MWG characterizes as one of the “positive effects of load caps.” (MWG Init. Br. at

6). Most of the proponents' evidence of load cap benefits consists of just such carefully worded

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<sup>5</sup> MWG represents approximately 117% of the initial auction load (all Ameren load) and 218% of the typical annual auction load, after the initial auction, calculated as follows: MWG capacity (9366.6 MW) ÷ initial auction load (8000 MW) = 117% and MWG capacity (9366.6 MW) ÷ typical annual auction load (4300 MW) = 218%. (*See LaCasse Dir. Resp. Ex. 6.0 at 31:705-706, 48:1090-1092 and 50:1126-1130; Sibley Dir. Staff Ex. 2.0 at 13.*)

assertions of uncertain benefits. In addition, the MWG assertion that load caps will produce “increased competitive pressure” (*Id.* at 10) flies in the face of testimony that low-cost suppliers, which are likely to be excluded by an Illinois load cap, are the more aggressive bidders. (Salant Jt. Tr. 1087). The costs of a load cap are more certain -- interference with market competition, exclusion of low-cost supply, and likely higher prices to consumers.

Load cap advocates also argue that the exclusion of low-cost supply occasioned by a load cap does not mean higher auction prices -- because suppliers will not bid based on their production costs in any case. (*See, e.g.*, MWG Init. Br. at 9). Ameren’s Dr. LaCasse states:

**While** the notion that electricity **prices** should be **based** on the **marginal cost** of the marginal unit **underlies** much of the theory of price formation in **competitive wholesale** spot power **markets**, it is **not** the notion that is **relevant** to the auction product.

(LaCasse Reb. Resp. Ex. 12.0 at 47:1123-1126, emphasis added).

These arguments to retain a load cap provide ample basis for the Commission to question whether (a) an auction product that is distinct from the competitive wholesale market products that underlie the auction proposal and (b) market dynamics where competition forcing prices to cost is not “relevant” will, in fact, produce the lowest prices for Illinois’ consumers. This is one of the reasons why the Commission needs to approve a formal review to evaluate the desirability of continuing the auction process.

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

In testimony and its Initial Brief, IIEC recommended that Ameren’s proposal to hold its initial auction in September 2006 be adopted, if an auction is approved. (Collins Dir. IIEC Ex. 3 at 6:98-102; IIEC Init. Br. at 22-24). IIEC argued that an auction closer to the date of power delivery would yield a more accurate price due to a decrease in the risk premium associated with

bids into the auction and that the interim is better spent in preparing for a good auction than in correcting a bad one. Ameren, Staff, Constellation Energy Commodities Group (“CCG”), and CES also address the initial auction date issue in their Initial Briefs. (*See* Ameren Init. Br. at 78-79; Staff Init. Br. at 69-72; CCG Init. Br. at 15; CES Init. Br. at 19-25). At this point in the proceeding, no party vigorously opposes the September 2006 date for an initial auction. Ameren, IIEC and Staff support an initial auction date of September 2006 in their briefs. (IIEC Init. Br. at 22; Ameren Init. Br. at 78; Staff Init. Br. at 71). CCG did not oppose a September 2006 initial auction. (*See* CCG Init. Br. at 15). CES also finds the September 2006 date may in fact be reasonable under certain circumstances,<sup>6</sup> but it appears to be the only party that continues to question that date. (CES Init. Br. at 25).

CES focuses on two issues: price and technical requirements. First, CES says that Ameren’s assumption that a September auction would be more accurate than an earlier auction “does not always hold true.” (*Id.* at 22). With respect to future events, nothing is certain, but it defies common sense to suggest that a date even further in time before an event will provide a more accurate perspective. Second, CES says there is no technical reason to wait until September, because eight months is more time than is required to prepare for the auction. (*Id.* at 20-21). At the same time, CES emphasizes the novelty of an auction in Illinois and asserts that an early date will provide “the benefit of additional time to make corrections or adjustments in the event of problems that impact” the auctions. (*Id.* at 23). IIEC (like Staff) believes that the consumers of Illinois will be best served by avoiding, rather than correcting, auction miscues. “It would be preferable to spend more time ironing out any problems upfront rather than, as CES

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<sup>6</sup> CES claims that the September date is reasonable if Ameren makes “changes” or “revisions” similar to those made by ComEd. Unfortunately, CES does not identify the subject changes or where they are contained in the record in this proceeding. Nor does CES discuss the relevance of such changes to a particular auction date.

suggests, scheduling the auctions at an early date and leaving September 2006 as a fallback date.” (Staff Init. Br. at 71).

CES does not discuss the divergence of its interests from those of consumers. The Commission should not forget that it is Illinois businesses and residents that will be directly affected by any auction process. An auction’s results would determine their rates for an essential service. An earlier date for the auction will result in additional risk for wholesale suppliers. That risk will be reflected in a premium added to their bids. This in turn will result in a higher auction clearing price and thus higher prices for end-use customers. The retail supplier members of CES will not participate in the auction as bidders; the cost of their competitive supplies will not be determined by the auction; and an uncertainty premium will not affect the prices of their electricity products. While a higher auction price may be attractive to CES members, because it is easier to compete against, it is not a good result for consumers.

There is no compelling reason for advancing the initial auction to a point in time more than one-half year before the winning bidders will be required to supply power, with the concomitant increase in risk and price. (*See* IIEC Init. Br. at 22). The Commission should reject CES’s questioning arguments and accept the otherwise unanimous conclusion of the parties (including apparently CES) that the September 2006 initial auction date is reasonable.

## **G. Common vs. Parallel Auction**

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

In its testimony and Initial Brief, IIEC supported the development and implementation of a common deliverability test for resources in the combined PJM-MISO footprint to deliver power and energy to load in the ComEd and Ameren service areas in Illinois. (Dauphinais Dir.

IIEC Ex. 2 at 3:33-45; IIEC Init. Br. at 29). Currently, separate, distinct tests are required by PJM and MISO to assess the ability of particular resources to deliver power to load in each Regional Transmission Organization's ("RTO's") respective footprint. The practical and economic hurdles to actual use of resources in one RTO for load in another make switching among ComEd and Ameren auction segments unlikely. (Dauphinais Dir. IIEC Ex. 2 at 6:127-7:153). It is IIEC's position that only by acting affirmatively to assure elimination of this hurdle to switching products in the ComEd and Ameren auctions can the Commission assure that consumers truly realize the benefit of a common, simultaneous auction where suppliers can switch supplies between auctions. (*Id.* at 7:148-9:188). IIEC is not suggesting, and has not suggested, the combined auction be delayed until a common deliverability test is implemented.

In its Initial Brief, Ameren does not oppose cooperating with ComEd, MISO and PJM in a joint effort to implement a common deliverability test. However, it cautions that the Commission must recognize that the Ameren Companies and ComEd control neither the existence nor the results of such a joint effort. Ameren also argues the absence of a common deliverability test should not delay approval or implementation of the auction. (IIEC agrees.) In addition, Ameren agrees that improvements to the wholesale markets through a common deliverability test or other means can improve the effectiveness of the proposed auction process. (Ameren Init. Br. at 81-82).

Staff appears to be the only other party that addressed this issue in its Initial Brief. Staff concluded that **if** IIEC was suggesting that the auction be delayed until a common deliverability

test was implemented then Staff recommended IIEC's proposal should be rejected.<sup>7</sup> (Staff Init. Br. at 80). As stated above, IIEC is not making such a recommendation.

Therefore, given Ameren's acceptance of IIEC's proposal and Staff's non-objection, the Commission should order Ameren to work with ComEd, MISO and PJM in a joint effort to implement a common deliverability test for resources in the combined PJM-MISO footprint to deliver power and energy to load in the ComEd and Ameren service areas in Illinois. The Commission should designate a date certain for completion of the effort, with progress reports to the Commission being made every 90 days. It is appropriate for the Commission to recognize, as Ameren requests, that Ameren does not have full control over such a process, or its results.

#### **H. Blended, Fixed Price Auction Products for Small Customers**

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

IIEC did not present argument on the service to be provided to customers smaller than 1 MW in testimony or its Initial Brief. However, CES proposes to include the load of customers with demand of 400 kW together with those customers over 1 MW in the BGS-LFP annual product auction. (CES Init. Br. at 28-37). IIEC opposes CES's proposal because it will combine dramatically different loads and inevitably increase costs to larger customers. (*See* Ameren Init. Br. at 84-87; Staff Init. Br. at 85-88).

CES states as follows:

In short, the Commission should direct Ameren to revise its customer groupings and enrollment window to be similar to those which ComEd presently is advocating.

(*See* CES Init. Br. at 28-29).

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<sup>7</sup> Staff believed Mr. Dauphinais' testimony was ambiguous on this point and opposed Mr. Dauphinais' recommendation only if the proposed auctions would be delayed. (Staff Init. Br. at 79-80). Any such ambiguity is removed by the clear position stated in IIEC's briefs.

However, ComEd is proposing fixed price service for customers only as large as 3 MW. Ameren, on the other hand, is proposing a fixed price option for all customers greater than 1 MW. Hence, the customer classes are dramatically different and, if CES's ill advised proposal were adopted in this case, there could conceivably be a customer class including customers as small as 400 kW to 300,000 kW, with their dramatically different load profiles and costs to serve. (IIEC Init. Br. at 26; Blessing Tr. 461-467). Further, CES improperly references, in a footnote on page 29, testimony and brief positions that are specific to the ComEd case, and thus are not even a part of the case at bar. CES's recommendation should be rejected.

CES claims that Ameren's stated reasons for not including these relatively small customer loads in with large customer loads "do not justify Ameren's anticompetitive, anti-consumer proposal." (CES Init. Br. at 30). Ameren's reluctance to adopt CES's proposal is neither anticompetitive nor anti-consumer. CES's proposal, by its nature, would tend to skew the auction prices associated with large industrial customer loads. This is because the costs to serve larger, higher load factor loads are different from the costs of serving commercial type loads. (Blessing Tr. 461-467). It is not anti-consumer to strive to achieve proper auction prices and customer rates. Indeed, just the opposite is true. The CES proposal should be rejected.

If the Commission were to reduce the BGS-LFP threshold to 400 kW, against recommendations by IIEC, Staff and Ameren, this makes the IIEC proposal to establish a separate auction segment for customers 3 MW and greater all the more critical. In its Initial Brief, IIEC explained multiple benefits associated with formulating a separate auction segment for customers greater than 3 MW. (*See* IIEC Init. Br. at 35-36).

Finally, without evidentiary support, CES alleges that its proposal would properly assign cost and minimize the risk of cross-subsidies. (CES Init. Br. at 36). Presumably, CES is

referring to some sort of cross-subsidy between 400 kW customers and smaller customers. However, totally absent from CES's discussion is the potential cross-subsidy that would be created by grouping these small customers in with large customers. IIEC witness Mr. Stephens explained in testimony how the grouping together of small customers with larger customers can introduce (not minimize) a form of cross-subsidy. (*See* Stephens Reb. IIEC Ex. 4 at 7:153-8:159). CES's proposal should be rejected by the Commission.

## **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**

DES-USESC make recommendations regarding services to 1 MW and over customers. (DES-USESC Init. Br. at 22). Specifically, they recommend all customers 1 MW and over be entitled to an hourly product only from Ameren even though their service has not been declared competitive. However, they offer no justification or rationale for their proposals. IIEC has addressed the need for a one-year fixed price product for large customers in its Initial Brief. (IIEC Init. Br. at 29-31). IIEC directs the reader to those arguments.

In addition, RESs have shown a substantial lack of appetite to serve load in the Ameren service areas and offer products and service customers want. The Commission should not adopt proposals, such as the one made by DES-USESC here, that would force large customers to do business with RESs or face the extreme volatility and high prices associated with hourly pricing. The Locational Marginal Pricing in the ComEd zone had prices of over \$100 per MWh for over 100 hours in the last year. (*See* Domagalski/Spilky Dir. CES Ex. 3.0 at 22:454-456). This uncertainty in prices is likely to be seen in MISO. (*Id.* at 22:457-458). Under these

circumstances, the DES-USESC recommendation that 1 MW and over customers receive only hourly service from Ameren should be rejected.

## **2. Prequalification of BGS-LFP Load**

IIEC recommended that large customers should be required to “prequalify” their load for service under the Ameren annual fixed price product. This action would serve to mitigate load risk for potential auction suppliers, which in turn should serve to help reduce the auction price. (IIEC Init. Br. at 31-33). No party took a position opposing this proposal in the evidentiary phase of the case. In its Initial Brief, Staff endorses this recommendation for essentially the same reasons as IIEC. (Staff Init. Br. at 92-93). Ameren, however, for the first time, announces in its Initial Brief that it believes IIEC’s prequalification proposal should be rejected, suggesting that this step would be an administrative hurdle and burden that would limit a customer’s ability to choose between alternatives. (Ameren Init. Br. at 89).

### **Reply to Ameren**

Ameren argues:

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 loose [sic] the opportunity to compare the final BGS auction prices against other supply sources.

*(Id.)*.

Notably, Ameren, which had not previously objected to IIEC’s proposal, fails to cite to any record evidence in support of its position.

Ameren's characterization of the prequalification step as an administrative hurdle or obligation and deadline does not tell the complete story. Implicit within Ameren's proposal for BGS-LFP is a 30-day customer enrollment period. If customers currently on bundled service do not elect alternate service within the 30 days, they default to Rider BGS-LFP service. Moreover, if customers not currently on bundled service do not affirmatively enroll with Ameren within the same 30-day election period, they lose the right to BGS-LFP service for the remainder of the year. (Blessing Dir. Resp. Ex. 3.0 at 9:196-202; Cooper Reb. Resp. Ex. 15.0 at 21:439-22:461). Therefore, Ameren's BGS-LFP enrollment process already incorporates "deadlines and obligations." Prequalification, if adopted, would merely turn a one-step process into a two-step process. In contrast to the enrollment step, however, the prequalification step would actually have the beneficial impact of reducing the resulting auction prices.

Ameren's 11th hour objection to the prequalification proposal and its meager supporting rationale do not justify rejection of IIEC's recommendation. The prequalification step will make the auction process more efficient. (Stephens Dir. IIEC Ex. 1 at 13:271-272). As a result, it is likely to yield lower prices. Customers should not be deprived of potential savings associated with this step. The Commission should approve IIEC's recommendation, which has been endorsed by Staff.

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

Ameren's arguments and position related to the demand charge component for  $\geq 1$  MW actually appear under Section VII.B.11. Other. (Ameren Init. Br. at 137). At that location, Ameren describes that Ameren and IIEC entered a stipulation and agreement on this issue to implement a cost based demand charge in the fixed price rate design for  $\geq 3$  MW customers.

This issue also is described in IIEC's Initial Brief. (IIEC Init. Br. at 33-34). IIEC agrees with Ameren that the Ameren/IIEC Stipulation should be adopted on this point. (*See* Ameren/IIEC Jt. Ex. 1 Sec. 3).

With regard to the discussion of interruptible service that actually appears in this section of the Ameren Initial Brief, IIEC respectfully notes that it appears to be substantially duplicative of the statement that appears in Section VII.B.10 titled "Alternative Proposals re Interruptible Service." (*See* Ameren Init. Br. at 136). IIEC will not discuss this matter further here other than to state IIEC agrees with Ameren that the Stipulation of IIEC and Ameren on the provision of interruptible service to customers 5 MW and above should be adopted. (*See* Ameren/IIEC Jt. Ex. 1 Sec. 1).

#### **4. Other**

##### **b. Separate Auction Segment**

IIEC explained in its Initial Brief the need for a separate auction segment for customers with demands 3 MW and greater, explaining that a separate segment would promote uniformity between the Ameren and ComEd products, and would recognize the fact that the load characteristics and associated load risk of the customers in the groups differ significantly. (IIEC Init. Br. at 35-36). Although no other parties address this issue directly in their initial briefs, CES's proposal to expand the BGS-LFP class to include customers as small as 400 kW and Staff's proposal related to "opt in vs. opt out" impact the importance of IIEC's position on this issue. If either CES's proposal or Staff's proposal is adopted, over the objections of Ameren, Staff or IIEC, as applicable, this would make IIEC's proposal for a separate auction segment all

the more critical. Please refer to Sections V.H.2, *supra*, and VII.B.4.a.ii., *infra*, for further discussion.

**K. Regulatory Oversight and Review**

**4. Formal Proceeding(s) to Consider Process**

IIEC recommended the Commission initiate a formal review process, to be conducted on an annual basis, after each auction. The purpose of the review process would be to evaluate the fundamental structure of the auction and to determine whether the auction continues to be the appropriate means for power procurement for ComEd. Ameren and IIEC have stipulated to a formal review process if the Commission adopts a declining clock vertical tranche auction. Under the Ameren/IIEC approach, the Commission would conduct a formal review after the first and second auctions, and every two years thereafter. (Ameren/IIEC Jt. Ex. 1 Sec. 2; IIEC Init. Br. at 38; Ameren Init. Br. at 96, 135-136). Staff did not specifically discuss the Ameren/IIEC approach. (*See* Staff Init. Br. at 104-105). Staff states it does not object to Ameren's original suggestion for an informal workshop each year. (*Id.* at 105).

There appears to be a fundamental difference between the Ameren/IIEC stipulated approach and the Staff approach. There would be no formal review of any kind mandated under the Staff approach.

The proposal for informal workshops appears to be inconsistent with the New Jersey approach. New Jersey is the state with the greatest auction experience and the state that should have the greatest comfort in the auction process. (Salant Jt. Tr. 1060). Yet, New Jersey still conducts a formal review of the auction process each year, in which New Jersey regulators consider annually whether the auction process should be changed or discontinued. (Collins Reb.

IIEC Ex. 6 at 12:225-232, 15:300-303). It is difficult to understand why Illinois should forego such a review, since this state has no auction experience. Illinois customers should be entitled to safeguards of regulatory review that are at least equal to the protections available to their New Jersey counterparts. They should be assured of and entitled to participate in an annual formal review process.

Staff contemplates only a workshop on an annual basis. A workshop and a formal review process are not the same. There are significant differences in the tools available to participants in a workshop and a formal proceeding, including access to discovery. (Collins Reb. IIEC Ex. 6 at 13:259-262, 15:303-307). The Ameren/IIEC Stipulation approach would give all participants the right to conduct discovery and to present testimony or comments. (Ameren/IIEC Jt. Ex. 1 Sec. 2; Ameren Init. Br. at 135). Also, a formal process assures consumers that the Commission actually will timely assess all relevant developments, in a way that informal workshops do not guarantee. However, there is nothing to prevent the Commission from incorporating a workshop into the formal review process if it wishes to do so.

The workshop approach also does not appear to contemplate a comprehensive scope for Commission review -- in particular, consideration of the desirability of continuing the auction. (See Staff Init. Br. at 105). In the formal review process under the Ameren/IIEC Stipulation, the Commission would determine whether the auction process continues to be appropriate for the acquisition of power supply on a going-forward basis. The Commission should adopt the Ameren/IIEC Stipulation on this point.<sup>8</sup>

Staff argues that parties could initiate formal proceedings by filing a complaint or petition with the Commission, but does not explain how parties would gain access to the information they

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<sup>8</sup> If the Commission adopts the Stipulation for formal reviews, Ameren and IIEC have also agreed that the Commission need not take action on IIEC's recommendation that 1 MW and over customers be provided a three-year fixed price product. (Ameren/IIEC Jt. Ex. 1 Sec. 4).

would need to ascertain the necessity for or to support such a complaint or petition in the first instance. Without access to such information, parties -- who would bear the burden of proof (*see* 220 ILCS 5/16-107 and 10-110) -- would have a difficult time persuading the Commission to initiate proceedings, and meeting their burden of proof. Moreover, a petition or a complaint to open an auction investigation is not a realistic or fair remedy for customers required to automatically pay power supply costs incurred by Ameren.

To recapitulate, New Jersey, the state with the most auction experience, continues to believe annual formal reviews are necessary elements of the auction process, based on its experience with the auction to date. Illinois, a state with no auction experience whatsoever, should do no less. Adoption of the Ameren/IIEC Stipulation on this issue would go a long way toward providing Illinois customers with protections equal to those provided to end-use customers in New Jersey.

## **VII.**

### **TARIFF AND RATE DESIGN ISSUES**

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

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

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

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

Ameren originally proposed, and IIEC supports, a 30-day enrollment window for BGS-LFP auction products. (Ameren Init. Br. at 126-129; IIEC Init. Br. at 39-42). Staff also supported the 30-day window in its direct and rebuttal testimony. (*See* Staff Init. Br. at 165; Schlaf Dir. Staff Ex. 5.0 at 6:130-131; Schlaf Reb. Staff Ex. 13.0 at 5:105-110). CES proposes a

75-day enrollment window. (CES Init. Br. at 39). CCG observes that the duration of the window could impact price. (CCG Init. Br. at 19).

IIEC continues to support the 30-day enrollment window. A longer window will mean that suppliers will add a premium to their bid price to cover the cost of the additional risk associated with holding their prices open for longer periods of time. (Stephens Reb. IIEC Ex. 4 at 12:234-256; Stephens Jt. Tr. 59).

Proposals to extend the enrollment period ignore the empirical analysis performed by Staff witness Dr. Schlaf, which demonstrated the impact of increasing the enrollment window on auction prices. (Schlaf Reb. Staff Ex. 13.0 at 4:93-5:99). The total risk premium for the 75-day window would be over 5% (3.2% for 30 days and 1.8% for the additional 45 days). (See Staff Init. Br. at 166-167).

Predictably, CES opposes Ameren's proposal to minimize prices to retail customers (because it gives retail suppliers less headroom), arguing that the premium associated with holding the BGS-LFP auction price open is "merely theoretical." (CES Init. Br. at 45-47). Ironically, CES relies in large part on the testimony of its witness Dr. O'Connor, Vice-President for the Illinois Market for Constellation NewEnergy. (*Id.* at 46; O'Connor Dir. CES Ex. 1.0 at 1:4-6). CES conveniently ignores the testimony of Michael Smith, Vice President of Regulatory and Legislative Affairs for another Constellation company, Constellation Energy Commodities Group, Inc. Mr. Smith testified that it was likely that suppliers would price an auction premium into their bids, to account for the optionality associated with the period of time the customer would have to choose to take BGS-LFP service. (Smith Dir. CCG Ex. 1.0 at 1:8-12 and 3:80-88). Another potential supplier, Dynegy, also testified that the more risk and uncertainty suppliers are required to accept, the higher the auction clearing prices will be, and that time-

related uncertainty is one of the reasons prices are not kept open by suppliers for extended periods of time. (Huddleston Jt. Tr. 1041-1042).

Therefore, the premium for holding open the price for the BGS-LFP product is hardly theoretical. Indeed, Dr. O'Connor himself had to agree that his own company, as a standard rule, would not hold open prices for the 75 days recommended by CES. (O'Connor Jt. Tr. 209-210). CES cannot now credibly argue that the premium for holding open the BGS-LFP price is "merely theoretical." If it were, then Mr. Smith and Mr. Huddleston would not have testified otherwise, and Dr. O'Connor's company would routinely hold its prices open for extended periods of time.

CES next reasoned that customers require more time to decide on taking the BGS-LFP product and that giving these customers additional time is worth the additional premium (price increase) customers would pay. (*See* CES Init. Br. at 46-47). However, CES does not speak for larger customers who have stated they do not require additional time and prefer not to pay the additional premium. (IIEC Init. Br. at 41). In addition, the Commission should remember that CES is a coalition of retail electric suppliers who will not pay the premium themselves, but rather will benefit from it. Therefore, they have nothing to lose by suggesting customers would rather pay the premium in return for more time to make their decision about the BGS-LFP product.

Staff, in spite of its cogent and persuasive arguments and empirical analysis, now recommends an increase in the enrollment window. While Staff would not support a window in excess of 45 days, it would accept as a compromise a 40 to 45-day enrollment window and recommends that Ameren be required to study the appropriate duration of the enrollment window and report to Staff and the parties on the results of its analysis. (Staff Init. Br. at 168).

IIEC respectfully disagrees with Staff's suggestion. The record here clearly demonstrates, and the testimony of at least two suppliers (Dynergy and CCG) affirms, the fact that the market clearing price in the auction will be higher than it would be otherwise as a result of extending the enrollment window.

Expansion of the 30-day window will increase prices to all affected customers. The 30-day window should be applied to all customers 1 MW and over. At a minimum, if a separate auction segment is established for 3 MW and over customers, as IIEC has recommended (IIEC Init. Br. at 35-36), the 30-day window should be applied to those customers.

## ii. Opt In vs. Opt Out

IIEC did not address this issue in its Initial Brief. However, the Initial Briefs of Ameren and Staff have introduced conflicting information on this issue that has the potential to negatively impact IIEC members. Therefore, IIEC provides the following reply.

### **Reply to Staff**

As mentioned in Section V.I.2. – Prequalification of BGS-LFP Load, *supra*, Staff recommends that IIEC's prequalification proposal be adopted by the Commission. The economic benefit of prequalification is that it should reduce any risk premium that wholesale suppliers might consider adding to their bids because of uncertainty about the amount of load that must be served. (Staff Init. Br. at 92-93). Prequalification defines the maximum amount of load to be served, **before** the auction, so that bid prices need not include as much of a premium to take account of load uncertainty.

In the section labeled VII.B.4.b. – Other Switching Rule Issues, Staff states that it does not oppose the Company’s adoption of Dr. Schlaf’s recommendation that bundled service customers that do not make a supply selection during the post-auction enrollment period default to the auction fixed price supply product. In other words, those customers (ones already taking fixed price bundled service) would have to “opt out” of the fixed price auction product to elect a RES alternative.<sup>9</sup> (*Id.* at 169). This second recommendation, however, threatens to nullify the benefits of prequalification that have been identified by Staff and IIEC.

In discussing its prequalification recommendation, Staff does not clearly explain which customer sub-groups would be required to prequalify their loads -- *viz.*, bundled service customers, delivery service customers, or both. Unless both groups are required to prequalify their loads, the beneficial effect of the prequalification proposal could be lost.

The potential confusion and loss of economic benefits are probably an unintended consequence of Staff’s efforts to try to protect smaller Ameren customers from the consequences of a failure to make a timely service election under Ameren’s original proposal -- defaulting to real time pricing service. (Ameren Init. Br. at 129). However, such protection should not come at the expense of other (generally larger) customers able and willing to make timely decisions to keep prices lower.

In an effort to resolve this conflict, IIEC submits that its proposal for a separate auction segment for  $\geq 3$  MW customers, implemented as explained below, is a sensible arrangement -- perhaps the only arrangement -- that will preserve the benefits of both prequalification and Staff’s opt-out proposal. Specifically, IIEC recommends that Staff’s default to the fixed price

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<sup>9</sup> In the enrollment window section, Staff states, “Except for new customers, any customer that does not sign up during the enrollment period would be ineligible to take BGS-L service until the beginning of the next supply period.” (*Id.* at 164). IIEC assumes that in this passage Staff refers only to customers on delivery service, since including all customers in this statement would contradict Staff’s position on the default to the post-auction bundled service.

product be preserved for smaller ( $< 3$  MW customer), while  $\geq 3$  MW customers would retain the price benefit of their willingness to increase certainty for suppliers by prequalifying of their loads. Smaller customers would be protected against unintended enrollment in volatile real time pricing because of a missed deadline. Larger customers, for whom small price differences can cause very substantial bill impacts, and suppliers, for whom greater pre-auction certainty about the load to be served means better prices, could retain the benefits of IIEC's proposed prequalification process. Each of Staff's recommendations reflects legitimate customer concerns. However, the distinct recommendations are difficult to implement for the same customers. IIEC's proposal here associates each recommended procedure with the group that benefits most from it.

As explained in other sections of this brief and IIEC's Initial Brief, a separate segment for  $\geq 3$  MW customers is independently justified by the distinctive load profile, cost, and migration characteristics of that customer group and the enhanced ability of auction suppliers to switch bids between Ameren and ComEd auctions. This tension between the opt-out and prequalification processes is one more reason to establish a separate auction segment as IIEC has proposed. IIEC's proposal to preserve the benefits of Staff's recommendations, without having one group benefit only at the expense of another, should be adopted by the Commission. If the Commission does not approve IIEC's recommendation to resolve the conflict between Staff's support for prequalification and its support for the opt-out proposal, then it should adopt the prequalification proposal over the opt-out proposal.

## **10. Alternative Proposals re: Interruptible Service**

Ameren correctly states that IIEC and Ameren have stipulated on the provision of interruptible service to BGS-LRTP customers with demands of 5 MW or more. (Ameren/IIEC Jt. Ex. 1; Ameren Init. Br. at 136-137). No party, other than Ameren and IIEC, addressed this issue in their testimony in this proceeding. No party opposed the stipulated resolution of this issue in their initial brief. For the reasons IIEC discussed in its Initial Brief (IIEC Init. Br. at 44), adoption of the Stipulation would be beneficial.

## **11. Other**

As discussed in Section V.I.3., above, IIEC and Ameren have stipulated on the inclusion of a cost based demand charge component in the rate design for any rate applicable to 3 MW and over customers by the time of the third auction in February of 2009 or the first auction following the time a capacity market is implemented in the MISO. (Ameren/IIEC Jt. Ex.1 Sec. 3). No party opposed the stipulated resolution of this issue in its initial brief. The Stipulation should be adopted.

### **a. Self-Generation Customer Capacity Charges**

In its Initial Brief, IIEC recommended that Ameren be required to clarify its tariffs to make absolutely clear Ameren's intent to bill capacity charges for Rider RTP-L customers on a per kW-day basis. (IIEC Init. Br. at 44-46). No party has objected to billing Rider RTP-L customers on a per kW-day basis. Ameren has stated that it intends to bill customers in this fashion. Therefore, the Commission should direct Ameren to modify proposed Rider MV such

that Rider RTP-L customers will be assessed the HASC (i.e., capacity charges) on a per kW-day basis rather than a per kW-month basis, consistent with Ameren's stated intention.

**C. Additional Tariff and Rate Design Issues**

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

IIEC recommended that the Commission reject Ameren's proposed Rider D. (*See* IIEC Init. Br. at 46-50). CES and Staff also recommended that the Commission reject Ameren's proposed Rider D. (*See* CES Init. Br. at 56-57; Staff Init. Br. at 191-193). The only party supporting Rider D is Ameren.

Ameren argues if Rider D is disallowed and the interest of suppliers bidding on the BGS-LRTP product wanes, Ameren customers eligible for the hourly pricing product will be worse off. Ameren asserts that Rider D is intended to be a proxy for the capacity planning costs customers eligible to take hourly pricing service impose on BGS-LRTP suppliers. Rider D would produce a guaranteed revenue stream for BGS-LRTP suppliers, even if no customers take hourly pricing service. (Ameren Init. Br. at 140). Through Rider D, customers -- not the competitive suppliers -- bear the risk that fewer customers than anticipated will take a service, so that Ameren (which refuses to bear that risk) and the winning supplier (which Ameren believes should not bear that market risk) do not have to bear the risk of capacity costs associated with BGS-LRTP service.

Staff and IIEC pointed out that despite the active participation of a number of potential auction bidders in this proceeding, there has been no evidence that suppliers for the BGS-LRTP product will not participate in the auction in the absence of Rider D's guaranteed revenues. Ameren responds by observing that there has been no affirmation by any supplier that it would bid on this product, so Ameren must plan for all reasonable possibilities.

Ameren has the burden of proof in demonstrating that its proposed Rider D is just and reasonable. Imposing a charge for which there is no demonstrated need, no cost support, and only a speculative purpose requires more supporting evidence than Ameren has provided in this record.

In its Initial Brief, Ameren ignores two important facts established by the record. First, there is **no** cost support for the proposed charge. Even though the size of the proposed charge is small, Ameren cannot show that the Rider D charge is just and reasonable when it has failed to provide any cost support for its Rider D charge. Instead, Ameren essentially admits the arbitrariness of the charge, since it has merely copied a charge used by different utilities, in a different state with different markets. (Cooper Sur. Resp. Ex. 22.0 at 11:228-230).

Second, Ameren proposes to impose the charge on customers not taking the related RTP service. Ameren is authorized to recover its costs of service. It is not authorized to charge end users unsupported fees to entice bidders into an auction for a service they may never take. And, Ameren has admitted it is not known whether the charge in New Jersey is truly necessary to attract bidders. (Cooper Tr. 295).

Ameren also has not answered CES's criticism that the Rider D charge will be a deterrent to retail competition. Nor has it offered any distinction that explains its proposal when ComEd has not proposed an equivalent charge for its own hourly pricing service in Docket No. 05-0159. (Dauphinais Reb. IIEC Ex. 5 at 10:191-193).

Finally, Ameren suggests that the Commission -- not Ameren -- will be to blame if Ameren's proposed RTP power auction is not popular with suppliers. (Ameren Init. Br. at 140). Despite Ameren's assurances that the Commission and Ameren's customers may rely upon the existing competitive markets through the auction, Ameren is unwilling to rely on those same markets when its interests -- having the auction model appear successful -- are at stake.

Ameren has not provided any cost support for the proposed charge and not demonstrated any need for the charge, which would be applied to customers not even taking the associated service. Moreover, Ameren has failed to meet the challenge of evidence and argument respecting policy issues such as the anti-competitive effects of the charge. Almost by definition, unnecessary charges set at arbitrary levels and imposed on customers not taking the associated service are not just and reasonable. Ameren has offered no reason why the Commission should conclude otherwise.

**X.**

**CONCLUSION**

None of the parties opposing IIEC recommendations in this case have given any valid rationale for rejecting those recommendations. Therefore, for the reasons stated herein and in IIEC's Initial Brief, they should be adopted.

Respectfully submitted by the Illinois Industrial Energy Consumers,

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