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Inc. (“CCG”), Dynegy Inc. (“Dynegy”), the Illinois Industrial Energy Consumers (“IIEC”), the People of the State of Illinois (“AG”), and the Staff of the Commission (“Staff”) in the instant consolidated proceedings.

I. EXECUTIVE SUMMARY

THE COMMISSION SHOULD NOT ALLOW AMEREN TO CONTINUE WITH ITS “BUSINESS AS USUAL” APPROACH

Leave it to Ameren.

Only Ameren – in the face of a massive restructuring of its retail electric rates and a monumental opportunity to develop competition in its three service territories – would suggest that the Commission should allow the Companies to continue with “business as usual.” Only Ameren would suggest that a Migration Risk Factor is unnecessary because the Companies anticipate no additional customers will switch to RES service in the Ameren service territories after the transition period ends. Only Ameren would claim that the Companies’ failure to install adequate metering for customers is a sufficient reason to force residential and small business customers to subsidize medium-sized business customers. Only Ameren would claim that providing sufficient time for customers to choose suppliers other than Ameren is somehow anti-consumer. Only Ameren would claim that customers are better off by paying an exit fee to exercise customer choice. Only Ameren would claim that there is no need for the Commission to review the Companies’ post-transition communication materials because, from a retail market perspective, nothing is going to change. Well, something must change.

The Commission cannot just leave “it” to Ameren. The record in these consolidated proceedings reveals that customers should not be left to the tender mercies of Ameren; when

Ameren is left to its own devices, Ameren will not voluntarily facilitate competition. The Commission must clearly and explicitly refuse to further indulge Ameren's shenanigans.

The Commission has the opportunity in these consolidated dockets to finally turn things around for customers and competitive retail electric suppliers ("RESs") that wish to bring the benefits of competition to the Ameren service territories. Competition has failed to develop for customers in the Ameren service territories because Ameren has been allowed to adopt business practices and policies that thwart the development of competition. To a great extent, Ameren's business practices and policies are the exact converse of those of Commonwealth Edison Company ("ComEd"). Indeed, for evidence of switching behavior by customers unencumbered by Ameren's obstacles and barriers to competition, the Commission may simply turn to the monthly switching statistics that each utility submits to Staff.

Such behavior by Ameren must stop. The Commission must take the next crucial step and remove the anti-competitive obstacles that Ameren has erected, and that bar customers from access to meaningful product and service options. Further, the Commission must act and direct Ameren to adopt structures and rules reasonably comparable to those adopted in the ComEd service territory. The Coalition has presented the following six-step road map:

First, the Commission should direct Ameren to align its customer groupings with the groupings that ComEd is advocating in the ComEd procurement docket, ICC Docket No. 05-0159. Specifically, as the Coalition has explained, Ameren should be instructed to include the 400 kW to 1 MW customers together with customers greater than 1 MW for purposes of the annual auction. This revision, as proposed by the Coalition, has the significant benefit of protecting residential and small business customers from the migration risk premium that

suppliers likely will attribute to larger customers. Necessary metering should be installed post-haste.

Second, the Commission should require Ameren to adopt an enrollment window, applicable to customers eligible for Ameren's proposed annual product, of a minimum of 50 days for the initial auction and 45 days for subsequent auctions. Customers should be given reasonable time to choose a supplier other than Ameren. Given the meager level of competition in Ameren's service territories, the Commission would be justified in ordering a longer enrollment window for Ameren than for ComEd, but certainly the customer choice window should not be cut shorter.

Third, the Commission should require Ameren to adopt retail rules identical to ComEd's for customers that choose alternative suppliers or default to utility supply. ComEd has proposed to base its default products for customers with demands greater than 400 kW upon the customers' supply decision prior to the enrollment window. That is to say, for customers served by RES supply, the default would be RES service; for PPO or hourly service customers, the default would be hourly service; for bundled service customers, the default would be the annual product. To minimize the differences between the Ameren and ComEd products and to support competitive activity throughout the state, the same rules should apply to Ameren customers.

Fourth, the Commission should unequivocally reject Ameren's proposed Rider D for what it is -- an anti-competitive, non-cost-based, unduly discriminatory, unreasonable, and unjust exit fee. Ameren's proposal violates the fundamental tenant of customer choice: customers should reimburse Ameren for generation-related services only if such customers elect, either actively or passively, to take those services from Ameren. Especially in light of the fact that

ComEd does not have, and notably has not proposed, a similar non-bypassable charge, the Commission should disallow Ameren's implementation of its proposed Rider D.

Fifth, the Commission should provide guidance regarding a number of Ameren's proposed tariffs to ensure that other generation-related costs are recovered only from customers who elect to take those services from Ameren. In doing so, the Commission would ensure that costs are accurately recovered from the cost-causers. The Coalition identified specific issues associated with Ameren's proposed Supply Procurement Adjustment ("SPA"), the Companies' proposed accounting for uncollectibles, as well as for the Companies' proposed real-time pricing rate ("BGS-RTP").

Finally, the Commission should initiate, within 30 days of adoption of a final order in the instant consolidated proceedings, an investigation into Ameren's communication materials regarding customers' post-transition supply options. Despite Ameren's protests to the contrary, dramatic and fundamental changes will occur in customers' rates and options at the end of the transition period. Such systemic change necessitates the development of new materials to describe and explain customers' post-transition generation options. The Commission should ensure that Ameren does not market post-transition generation-related products (inadvertently or otherwise) when the Companies inform customers about these changes.

The Coalition respectfully request that the Commission direct Ameren to halt its long-running practice of obstructing and delaying the development of the competitive retail electric market in Illinois. The Commission can do so by ordering Ameren to implement these six (6) reasonable, pro-competitive steps.

II. NEED FOR COMMISSION ACTION

Staff accurately elucidated the factual and legal backdrop for the instant consolidated proceedings. (*See* Staff Init. Br. at 1-26.) With the expiration of both the mandatory transition period and Ameren's power purchase agreements, the Commission must determine how Ameren can meet its obligation to provide power and energy to its customers. Although the Coalition disagrees with many important issues in Ameren's proposed procurement process, the Coalition does maintain that Ameren's proposal, if modified in the manner advocated by the Coalition, will serve the competitive goals of the General Assembly and will provide for Commission pre-approval, oversight, and evaluation of the wholesale prices that emanate from the auction.

Nevertheless, the Commission should seriously question Ameren's commitment to competition. Ameren has adopted a "business-as-usual" approach to the development of competition in the retail electric market. The statutory mandate of the Illinois Electric Service Customer Choice and Rate Relief Law of 1997 ("Choice Law") is that the Commission is to promote the development a competitive market to benefit all Illinois consumers. But in the eight (8) years of what should have been a transition to a competitive market, Ameren plainly has not implemented the necessary steps toward retail competition. Ameren's unwillingness to modify its proposal, as well as its attitude toward retail competition as reflected in its Initial Brief, reiterates the Companies' lack of interest of giving competition a fighting chance. Thus, it is critical for the Commission to take concrete, affirmative steps to ensure that competition can develop in Ameren's service territory. In order to do so, the Commission must not endorse Ameren's flawed proposal.

A few intervenors questioned and challenged the Commission's legal authority to approve Ameren's procurement proposal in the instant consolidated proceedings. (*See* AG Init.

Br. at 3-19; CUB Init. Br. at 5-12.) Contrary to that position, the Coalition, Ameren, CCG, and Staff explained in their respective Initial Briefs that the Commission *may* and *must* take action in the instant consolidated proceedings to ensure that Ameren will meet its service obligations to the Companies' commodity customers once the transition period and Ameren's wholesale energy contracts expire. (*See* CES Init. Br. at 6-8; Ameren Init. Br. at 4-5; CCG Init. Br. at 2-4; Staff Init. Br. at 9.) The Coalition expressed concern that the Commission's failure to act would run counter to the General Assembly's directives and would loosen the Commission's control over Ameren's wholesale electricity procurement process by yielding such authority to the Federal Energy Regulatory Commission ("FERC"). (*See* CES Init. Br. at 7; *see also* Ameren Init. Br. at 20-23.) Ameren must procure power and supply for its commodity customers and, if the Commission fails to act, Ameren must and will seek FERC approval to do so. (*See* CES Init. Br. at 7.)

As a matter of explicit legislative directive and sound public policy, the Commission should approve a market-based post-transition procurement methodology for Ameren. Ameren's proposed procurement process, if modified as advocated by the Coalition, would properly safeguard the Commission's oversight of the Company's procurement process. (*See* CES Init. Br. at 8.) The key, however, is that Ameren's proposal *must* be modified -- otherwise, customers within the Ameren service territories will be barred from experiencing the benefits of competition (contrary to the Choice Law's mandate) and will continue to be frustrated by Ameren's business-as-usual approach, which indisputably has not and will not result in a vibrant competitive market. As such, the Commission's involvement and vigilance will ensure that the resulting wholesale rates produced through the auction process are just and reasonable, thus ensuring that a retail competitive market can flourish. (*See id.*; Ameren Init. Br. at 5.)

Accordingly, Commission action now is both necessary and appropriate.

III. LEGAL ISSUES

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

The AG and CUB each raised issues regarding the legal authority of the Commission to approve Ameren's procurement proposal. (*See* AG Init. Br at 4-19; CUB Init. Br. at 5-12.) The Commission deliberated upon and rejected most, if not all, of the AG and CUB's substantive legal issues.¹ In doing so, the Commission appropriately decided that the General Assembly granted authority to the Commission to oversee the current procurement proceeding and ultimately approve Ameren's procurement proposal. (*See* CES Init. Br. at 8-10.)

By enacting the Choice Law, the General Assembly formalized its belief that Illinois retail electric customers will benefit from competition because competitive pressures lower rates more effectively than regulation. (*See* 220 ILCS 5/16-101(e).) In turn, one important goal of restructuring the electric industry is to introduce competition to a formerly non-competitive, monopolistic market so that consumers will experience its benefits. As articulated above, it is crucial that the Commission, as the steward of the competitive retail electric market in Illinois, be guided by the provisions of the Choice Law and use its authority to approve a market-based structure for all customers served by Ameren default rates. (*See* CES Init. Br. at 8-10.)

IV. SUFFICIENCY OF THE COMPETITIVE MARKET

B. Other Jurisdictions' Experiences With Competitive Electricity Procurement

¹ As the Commission is well aware, there is a separate proceeding pending before the Circuit Court of Cook County in which certain parties have raised these same issues. (Case No. 05-CH-14914)

The Commission should consider the experience of New Jersey with its auction model² and Maryland with its request for proposals (“RFP”) model³ in evaluating the Coalition’s proposed customer groupings for annual products and comparing it to Ameren’s proposal. (*See* Coalition Init. Br. at 11-12.)

Ameren noted that the New Jersey auction model results in a “less complex, less contentious regulatory process.” (Ameren Init. Br. at 31.) Staff also appeared to embrace the New Jersey model. (*See* Staff Init. Br. at 19-20.) CCG also points to New Jersey as an appropriate model for Commission consideration, particularly with respect to the timing of the review of auction results. (*See* CCG Init. Br. at 14-15.) Neither Ameren, Staff, nor CCG commented on the Maryland experience.

The AG interprets the results from other jurisdictions very negatively. (*See* AG Init. Br. at 24-30.) The AG points out that in certain states, efforts to move toward a competitive market have been delayed or postponed. (*See id.* at 24.) This information, standing alone, is irrelevant to the situation in Illinois. The Choice Law’s mandate is clear. Although the AG apparently wishes otherwise, the General Assembly directed the Commission to implement rules to

² Currently, the New Jersey Board of Public Utilities (“NJ Board”) places the load of all customers with a peak load of 1.25 MW or greater in the hourly-priced auction. (*See* CES Ex. 4.0 at lines 474-78.) This “Commercial and Industrial Pricing” rate class is only offered an hourly-priced utility product and these customers have not experienced difficulty in finding offers in the competitive market. (*See id.* at lines 495-505.) Customers under 1.25 MW are offered a blended product made up of one- and three-year wholesale auction products. (*See id.* at lines 477-78.)

³ Since June 1, 2005, most Maryland business customers over 600 kW have been only offered an hourly-priced utility product. (*See* CES Ex. 4.0 at lines 484-91.) Starting January 1, 2006, all customers over 600 kW will be offered only an hourly-priced utility product. Business customers less than 600 kW will still be offered a one- or two-year fixed-price utility product after January 1, 2006. Residential customers will continue to be offered a retail product based on a layered wholesale portfolio that consists of one-, two-, and three-year wholesale contracts that are acquired in an annual RFP that is similar in many respects to an auction. (*See id.* at lines 488-91.)

facilitate a competitive electric market in Illinois. Thus, the fact that other states have chosen methods other than competition does not help the Commission perform its duty in this case.

The AG also points to the experience in several other states, asserting, without convincing evidence, that competitive markets have resulted in higher electricity prices. (*See id.* at 26-29.) With respect to New Jersey specifically, the AG points out that, not surprisingly, the auction results have concluded with raised auction clearing prices some years and lowered prices other years. (*See id.* at 26.) The AG reads something sinister into this fluctuation, rather than recognizing that in competitive markets prices sometimes go up and sometimes go down.

The Commission should consider the competitive procurement models developed by New Jersey and Maryland, particularly with respect to evaluating and adopting the Coalition's recommended customer class products.

C. Retail Market Conditions

With the exception of the Coalition's Initial Brief, the parties' Initial Briefs contained very limited discussion of the *retail* market conditions in Illinois. True to form, the Retail Market Conditions section of Ameren's Initial Brief attempted to completely dodge the issue -- for reasons that by now should be obvious to the Commission -- and instead used that space to engage in a debate with CUB and the AG over Ameren's ability to recover wholesale power costs. (*See Ameren Init. Br.* at 31.) In short, Ameren failed to acknowledge that, although competitive conditions within the ComEd service territory have resulted in substantial savings for Illinois consumers, the state of retail market conditions in Ameren's service territory is a major problem.

As a starting point, the Commission should recognize the Coalition's unrebutted evidence demonstrating that, by year-end 2004, competitive conditions in Illinois had yielded roughly

\$1 billion in savings for Illinois' non-residential consumers since passage of the Choice Law. (See CES Ex. 1.0 at lines 1011-1061.) The Coalition's Initial Brief identified four (4) empirical measures to demonstrate the substantial market development in the *ComEd* service territory. (See CES Init. Br. at 14-17.) No party attempted to rebut this evidence, and no party attempted to refute this evidence in their respective initial briefs.

Notwithstanding these unrebutted facts, the IIEC adopted a pessimistic and somewhat confusing view of the retail market conditions in Illinois as a whole, rather than just in the Ameren service territories. On the one hand, the IIEC contended that Illinois customers have not received the "full benefits of a competitive retail market" (IIEC Init. Br. at 10); on the other hand, the IIEC failed to define what "full benefits" means.

In the same vein, the IIEC described RES activity throughout the State as "unimpressive." (*Id.* at 11.) Even here, with this bold assertion, the IIEC failed to: (a) explain why roughly \$1 billion in savings to non-residential customers did not constitute "impressive" activity; (b) provide any analysis to explain its purported lack of competition in Illinois; and, (c) explain its casual reference to alleged problems caused by the "Reciprocity Clause" of the Public Utilities Act, 220 ILCS 5/16-115(d)(5).

When reviewed within the context of the Coalition's comprehensive factual and statistical analysis of the status of the whole Illinois retail market, the IIEC's pessimistic view of the market is unfounded and unpersuasive. Certainly, juxtaposed with the overwhelming evidence offered by the Coalition, as discussed above and in the Coalition's Initial Brief, the Commission should *not* adopt the IIEC's pessimistic view of market conditions for the State. Rather, as explained in detail in the Coalition's Initial Brief at pages 14 to 18, although competition in the ComEd service territory is developing relatively well, the same is plainly *not*

the case for the Ameren service territories, where Ameren's intransigence and opposition to competitive have been and continued to be an impediment to development of a vibrant market.

The Coalition's Initial Brief explained that competition has failed to develop in the Ameren service territories due to the Companies' policies and practices. (*See* CES Init. Br. at 18; *see also* CES Ex. 1.0 at lines 377-93, 407-19.) The positions taken in its Initial Brief further highlight Ameren's refusal to accept responsibility for the failure of competition to develop for its customers. Ameren's Initial Brief reveals a mindset of "business as usual," under which pro-competitive changes are not seriously considered and retail competition is simply not a viable option. The lack of competition in the Ameren service territories, combined with Ameren's response to the Coalition's reasonable recommendations, provide a compelling case for the Commission to impose conditions upon its approval of Ameren's proposal in the instant consolidated proceedings.

Decisive action now by the Commission is necessary so that consumers experience a meaningful transition to vibrant competitive wholesale and retail markets. (*See id.* at lines 410-412.) The end of the transition period should also be the end of institutional obstacles, intended or inadvertent, that frustrate customer choice. (*See id.* at lines 416-19.) The instant proceeding is the best opportunity for the Commission to replace Ameren's obstinacy with pro-competitive policies. No doubt, the yet-to-be-filed Ameren general rate case will present a key opportunity for the Commission to demolish these obstacles once and for all.

V. AUCTION DESIGN ISSUES

F. Date of Initial Auction

The Commission has been presented with few arguments to counter the Coalition's reasonable proposition that a May or July 2006 initial auction would increase flexibility and

options for the Commission, policymakers and, most importantly, customers. Although Ameren, Staff, the IIEC, and CCG each address this issue in their respective Initial Briefs, no party can deny that a September 2006 initial auction leaves very little time to correct any errors prior to the date that power is scheduled to flow.

Despite Ameren's original proposal to hold the initial auction in May, Ameren now supports a joint auction with ComEd sometime within the first ten (10) calendar days of September. (*See* Ameren Init. Br. at 78; *see also* Ameren Ex. 10.0 at lines 302-337.) Ameren asserted that such an auction timeline reduces the time premium that suppliers would have to account for in their auction prices. (*See* Ameren Init. Br. at 78.) However, Ameren failed to present any quantitative analysis of these alleged "premiums" and did not even attempt to explain the Companies' abruptly reversed position that providing customers with additional time somehow creates any alleged "premiums."

More importantly, Ameren offered no evidence to rebut the Coalition's analysis which revealed that wholesale power prices are not more volatile in July than in September. (*See* CES Init. Br. at 20; *compare* Nelson Tr. at 147 *with* CES Ex. 5.0 at lines 281-329.⁴) The data also demonstrated that a May 2006 initial auction, as proposed by the Coalition, would be subject to the lowest price volatility and lowest risk. (*See* CES Init. Br. at 20-21; CES Ex. 5.0 at lines at 288-303.)

The IIEC also supported the September 2006 initial auction and primarily echoed Ameren's unsupported assertion that an auction date earlier than September 2006 could result in a price premium attributable to the risks of changes in market conditions between the time of the

⁴ CES Ex. 5.0 refers to the revised version of this testimony that was filed on August 25, 2005.

auction and the date that customers receive power. (*See* IIEC Init. Br. at 22.) Again, the Coalition’s unrefuted evidence demonstrated that no such premium exists. (*See* CES Init. Br. at 20; CES Ex. 5.0 at lines 281-329.) The IIEC also contended that a September (versus a May auction) would allow bidders in the auction to “focus their efforts on a single task – preparing bids for the Illinois auction,” instead of simultaneously preparing for the auction and preparing supply arrangements for the summer peak season. (*See* IIEC Init. Br. at 24.) However, the IIEC did not cite any evidence that potential bidders prefer the September 2006 initial auction date. Further, any suggestion that an energy market participant can or should focus “on a single task” at any given time simply ignores the reality of the dynamic energy market. Indeed, potential bidder CCG acknowledged the many moving parts associated with the market and reiterated its preference for an auction earlier than September. As rationale, the CCG repeated that an earlier auction “would provide sufficient time, subsequent to the initial auction, for 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 Init. Br. at 15.) (Internal quotations omitted.) Notably, the CCG indicated that it will participate in the auction, regardless of what date the Commission ultimately orders. (*See* CCG Ex. 2.0 at lines 35-43.)

Additionally, while the IIEC implicitly agrees with the Coalition’s contention that customers should be the main focus of this proceeding, the IIEC attempted to dismiss the Coalition’s concern for customers by stating that an earlier initial auction would provide a “longer period for customer decisions” but an earlier auction “also provides a longer period for RES marketing.” (IIEC Init. Br. at 24.) The IIEC failed to explain how a longer period for RES marketing -- against the utility price and each other -- would harm consumers. The IIEC could

not explain, of course, because the opposite is true: providing customers with a reasonable time to negotiate would benefit consumers. (*See* CES Ex. 1.0 at lines 217-19.)

Finally, despite Staff's initial preference for an earlier initial auction date, Staff supports Ameren's revised proposal for a September 2006 auction. (*See* Staff Ex. 5.0 at line 402; Staff Init. Br. at 70.) Staff's Initial Brief provided no guidance for other parties to understand the motivations behind this apparent change of heart other than to state that Staff now believes that the September auction will provide Ameren sufficient time "to complete the tasks that must be completed prior to the auction." (*Id.* at 71.) Yet, even Ameren admitted that there is no technical reason to wait until September to conduct the auction. (*See* Nelson Tr. at 142.)

Thus, the arguments in support of a September 2006 initial auction date can be summarized as follows: (1) unsupported fear that, contrary to the historic data, an earlier auction might yield a higher price; (2) unsupported fear by some industrial customers (apparently not shared by potential bidders) that bidders are unable to focus on the Illinois auctions until September 2006; and (3) Staff's concern that, despite Ameren's testimony to the contrary, Ameren requires nearly three times as much time as the New Jersey utilities required to prepare for New Jersey's initial auction.

The Coalition previously addressed each of these assertions and offered substantial and reasonable explanations why the Commission should conduct the initial auction well before September 2006. (*See* CES Init. Br. at 19-25.) In short, an earlier auction will: (1) benefit consumers; (2) allow additional time to address any auction problems that arise; and (3) add much-needed certainty to the market. (*See* CES Init. Br. at 20.) Although Ameren, Staff, and the IIEC appear to believe that a September 2006 auction will allow sufficient time to address potential auction issues, the Coalition respectfully reminds the Commission of the critical

importance of a successful auction. The Commission should take every possible precaution to ensure that the market is launched successfully, with the least amount of uncertainty.

As explained by the Coalition and the CCG, an initial auction prior to September 2006 provides additional time for auction participants, the Commission, and the Auction Manager to correct or adjust unanticipated problems or issues that could adversely affect the ComEd and Ameren auctions. (*See* CES Initial Br. at 23; CCG Init. Br. at 15, CES Ex. 1.0 at lines 211-35; CES Ex. 2.0 at lines 145-60.) None of the parties adequately explained how a later auction will *lessen* these risks. On the contrary, delay increases the risk that the Illinois market could simply run out of time to address unexpected problems.

By setting an earlier initial auction date, the Commission would place its imprimatur on a time frame that defines the post-transition rules of the game well before the actual transition period ends. By doing so, the Commission would bring greater certainty to the retail market for customer decision-making, and thereby provide benefits to Illinois consumers and other retail market participants.

G. Common v. Parallel Auction

3. Between Ameren and ComEd Products

In a less-than-ringing endorsement of one of few pro-competitive aspects contained in its own proposal, Ameren asserted that “it would be acceptable if the Illinois auction process permits BGS suppliers to switch their bids during the auction” between the Ameren and ComEd products. (*See* Ameren Init. Br. at 81.) As Staff noted in its Initial Brief, the reason that the utilities agreed to conduct their auctions in parallel is because suppliers will most likely view the Ameren and ComEd products as having similar risks and characteristics. (*See* Staff Init. Br. at 77.) The Coalition agrees with the IIEC that customers with similar characteristics should be

grouped together (*see* IIEC Init. Br. at 25-26.); indeed, the Coalition advocated that the 400 kW to 1 MW customers should be grouped with the over 1 MW customers precisely because they all have a similar propensity to take service from RESs. (*See* CES Init. Br. at 27.) Nevertheless, the Coalition noted that the customers in Ameren's 400 kW to 1 MW customer group would represent a mere 3% of the total load that would be included in a combined auction. (*Id.*) Therefore, while congruence between the Ameren and ComEd auction products is a legitimate goal, the Commission should not reject ComEd's proposed customer groupings just because Ameren customers in the 400 kW to 1 MW range have not historically switched suppliers at the same pace as ComEd's similarly-sized customers.

H. Blended, Fixed Price Auction Product

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

Given Ameren's perspective, it should come as no surprise that Ameren seemingly did not design the Companies' auction products with the two principles of Customer Focus and Market Reliance in mind. As discussed at length in Coalition's Initial Brief at pages 28 to 37, consistent with those principles, Ameren's customer groupings should be modified to include the 400 kW to 1 MW customers with the over 1 MW customers in the annual auction.

Instead, Ameren asserted that the Companies looked at the following factors while designing its "conservative" auction products: (1) switching risk; (2) customer metering; (3) that the blended product is initially based upon contract terms of less than four, three and two years; (4) the fact that the auction products can be easily adjusted in later auctions; and (5) lessons learned from past auctions in New Jersey. (*See* Ameren Init. Br. at 84.) However, none of these "factors" justify Ameren's refusal to adjust its customer groupings as recommended by the Coalition. Indeed, to the extent that these "factors" are properly considered, they justify the Coalition's proposal:

Switching risk. Ameren admitted that the switching risk is higher for the 400 kW to 1 MW customers than for residential customers. (*See* Ameren Ex. 15.0 at lines 429-32; Blessing Tr. at 481-86. *See also* CES Init. Br. at 31-32.) The Coalition's witness Dr. O'Connor explained that following the transition period, the 400 kW to 1 MW customers are likely to have switching levels equal to similarly-sized customers in the ComEd service territory. (*See* CES Ex. 4.0 at lines 630-35.) Thus, this factor weighs strongly in favor of the Coalition's proposal.

Customer metering. Ameren should not be rewarded for its failure to install adequate metering during the mandatory transition period. To the extent that wholesale bidders do not

know the load profile history for the 400 kW to 1 MW customers, this factor further weighs in favor of the Coalition's proposal. (*See* CES Init. Br. at 31.) That is, the residential and small business customers should not be saddled with the inclusion of this uncertain load profile in their customer grouping.

Staggered contract terms for the blended product. With this "factor" Ameren seems to undercut the theoretical basis for its blended three year product, suggesting that the appropriate composition of the blended product is a combination of one, two, and three year products. The Coalition's proposal more appropriately recognizes that more sophisticated customers should receive the annual default product; the bidders should be able to focus upon the smaller business and residential customers for the blended product. (*See* CES Ex. 1.0 at lines 351-53.)

Ability to adjust auction products in later auctions. Ameren's point with this "factor" appears to be that it is acceptable for the Commission to make a mistake with the initial auction and remedy it later. Of course, the Commission should take all steps to avoid missteps in the first, but the Coalition's proposal would minimize the scope and magnitude of any "mistake" associated with the 400 kW to 1 MW customers.⁵ Again, this factor weighs in favor of the Coalition's proposal.

Lessons learned from New Jersey. Ameren picked and chose from the New Jersey experience as it suited Ameren's needs. As noted above, the NJ Board places the load of all

⁵ Ameren suggested that the 400 kW to 1 MW customers could be included in the blended product in the first year and then stripped out for subsequent years. (*See* Ameren Init. Br. at 84.) Merely implying this is a possibility underscores the uncertainty associated with including such customers in the blended product in the first instance. That is, if Ameren's proposal were accepted, bidders would have to price into the auction a premium to address the possibility that these customers all could be removed from the blended product load after the first year.

customers with a peak load of 1.25 MW or greater in the hourly priced auction. (*See* CES Ex. 4.0 at lines 474-78.) This “Commercial and Industrial Pricing” rate class is only offered an hourly-priced utility product. Customers under 1.25 MW are offered a blended product made up of one- and three-year wholesale auction products. (*See id.* at lines 477-78.) The Coalition’s proposal is more in line with the New Jersey model.

Finally, beyond the “factors” Ameren claimed to have considered, Ameren asserted that it rejected the Coalition’s proposal to have a separate auction for the 400 kW to 1 MW customers because it did not want to “split the customers into small groups based on customer characteristics.” (Ameren Init. Br. at 84.) To the extent that this was a valid criticism of the Coalition’s original proposal (the Coalition originally only advocated one additional customer grouping for the auction), it is not a valid criticism of the Coalition’s revised proposal. As explained in the Coalition’s Initial Brief at pages 28 to 37, the Coalition has further simplified its proposal and now recommends that the 400 kW to 1 MW customers simply be combined with the over 1 MW customer grouping, thereby aligning the Ameren customer groupings with the ComEd customer groupings.

The Coalition respectfully asks that the Commission to direct Ameren to revise its customer groupings to be similar to those which ComEd presently is advocating. Specifically, the Commission should order Ameren to include the 400 kW to 1 MW customer group with those customers over 1 MW in the BGS-LFP annual product auction.

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

(*See* Section V(H).)

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

(*See* Section V(H).)

VII. TARIFF AND RATE DESIGN ISSUES

B. Matters Concerning Rider MV

2. Rider MV – Definitions

a. Customer Supply Group Definitions

(See Section V(H).)

4. Rider MV – Retail Customer Switching Rules

a. Enrollment Window

i. Duration of Window

In the first year of the post-transition era -- a time in which customers are going to face significantly revised rates and options -- Ameren suggests that customers should have less time than ComEd's customers to evaluate their options.

Despite ComEd's support for a 50-day enrollment window for this initial auction, Ameren continues to support a 30-day enrollment window within which customers may choose between Ameren's revised products and RESs' products. Rather than utilize the well-established 75-day enrollment window modeled after the terms of ComEd's successful existing PPO product or the pro-consumer compromise position endorsed by ComEd, Ameren continues to "strongly oppose" any enrollment period longer than 30 days. *(See Ameren Init. Br. at 126.)* Further, despite the fact that no party has suggested giving customers *less than* 30 days to make their enrollment decisions, Ameren now glibly characterizes its 30-day proposal as a "compromise."

(*Id.*)⁶ It is precisely this kind of ardent opposition to providing customers with competitive options that has resulted in a dearth of competition in Ameren’s service territories.

To address Ameren’s institutionalized opposition to competition, the Coalition respectfully requests that the Commission direct Ameren to adopt the 75-day enrollment window or, as part of a comprehensive revision of Ameren’s retail rules to make them mirror those now proposed by ComEd, order Ameren to adopt a 50-day enrollment window for the initial auction and a 45-day window for subsequent auctions.

The IIEC echoed Ameren’s request to the Commission to approve the considerably shorter 30-day enrollment window. (*See* IIEC Init. Br. at 39.) The IIEC based its support for the 30-day enrollment window on the theory that such a shortened window will minimize any pricing premiums that wholesale suppliers may add to bids to compensate them for risks associated with a longer enrollment period. (*See* IIEC Init. Br. at 39.)⁷

In a competitive environment, the theoretical premiums asserted by Ameren, IIEC, and Staff likely will be “squeezed out” of bids and, therefore, will not be reflected in the final prices bid into the wholesale auction. (*See* CES Init. Br. at 47; Bohorquez and Bollinger Tr. at 430-31.)

However, even if Staff’s premium figures are accepted at face value for the sake of argument, this theoretical premium is a small price to pay to afford customers a meaningful opportunity to evaluate, negotiate, and execute their choices while, at the same time, provide

⁶ Contrary to Ameren’s implication, the CCG took no formal position on the duration of the enrollment window but acknowledged that “the duration [of the enrollment window] could impact price.” (*See* CCG Init. Br. at 19.)

⁷ Although the IIEC initially appeared to be supporting the 30-day enrollment proposal for all BGS-LFP customers, ultimately, the IIEC requested that the Commission retain the 30-day window for larger customers, regardless of what the Commission determines smaller customers may need. (*See* IIEC Init. Br. at 41-42.)

sufficient time for the utility to make the appropriate changes, should an error be discovered during the enrollment window. (*See* CES Init. Br. at 47; CES Ex. 2.0 at lines 92-94; O’Connor Tr. at 231-33.)

Even if a premium associated with providing customers with additional time does exist (and no evidence was presented to prove it does), customers would be better served by paying the alleged premium because they would have valuable additional time within which to make their enrollment decisions. (*See* CES Init. Br. at 47.) Staff now appears to support this conclusion, though it disagrees regarding the length of time necessary to make such decisions.⁸ (*See* Staff Init. Br. at 168.)

The Coalition noted that, if the enrollment window is too short, many customers simply will accept the utility supply option, not because it is the most economical option, but rather because customers simply lack sufficient time to implement and complete the decision-making steps necessary to meet their supply needs. (*See* CES Init. Br. at 40-41; CES Ex. 6.0 at lines 282-88.) Unlike the very large customers represented by the IIEC, most BGS-LFP customers do not have personnel or offices dedicated to buying electricity. As such, many of these customers simply require more than 30 days to analyze their electricity choices, move proposals through the corporate or institutional chain of command, negotiate contracts, and, finally, execute purchase transactions. (*See* CES Init. Br. at 43; CES Ex. 3.0 at lines 518-29; CES Ex. 5.0 at lines 137-98.)

⁸ Staff recognized that its original proposal of a 30-day window was too short, and now advocates for an enrollment period that is no longer than 40 to 45 days, acknowledging that the additional time could add an additional 0.4% to 0.5% of the forward price cost. (*See* Staff Init. Br. at 168.) Staff reasoned that its compromise “represents a significant increase in the time available to customers to make an election, while at the same time avoiding the imposition of a significantly increased risk premium.” (*Id.*) Staff likewise supported the idea of having a longer window associated with the first post-transition enrollment period. (*See* Schlaf Tr. at 1340.)

An appropriately defined enrollment window, because it directly affects customers' abilities to assess supply options, is critical to the development of the Illinois retail electric market. Accordingly, the Coalition respectfully asks the Commission to direct Ameren to adopt the 75-day enrollment window or, as part of a comprehensive revision of Ameren's retail rules to make them mirror those of ComEd, order Ameren to adopt a 50-day enrollment window for the initial auction; and 45 days for subsequent auctions.

6. Rider MV – Translation to Retail Charges

a. Customer Supply Group Migration Risk Factor

Regardless of the customer groupings that the Commission ultimately adopts in the instant proceeding, the Commission should direct Ameren to include a properly-calculated migration risk factor in its translation tariff. Such a migration risk factor is a necessary element of any translation methodology, and is required to account for prevailing market conditions at the time bids are formulated to recognize differing migration potential across customer classes. (*See* CES Init. Br. at 48-49.) Rather than failing to include a migration risk factor from the translation methodology calculated in Rider MV, as proposed by Ameren, the Commission should order Ameren to revise its translation tariff to include a migration risk factor that accurately accounts for the amount of load that is likely to switch if savings were available.

Ameren has requested that the Commission reject the Coalition's proposal for inclusion of a migration risk factor asserting that: (1) the "little switching by customers" in the Ameren service territories means that any premium would be "unsupportive and speculative;" (2) there is no basis to believe that ComEd's switching data is a "reliable metric" for the Ameren companies; (3) the Coalition has provided no quantitative analysis to support its proposal; (4) Ameren's resistance to a risk premium is "for this case only;" and (5) there has been no determination as

to how such a risk premium should be estimated. (*See* Ameren Init. Br. at 130-31.) Staff likewise opposed the Coalition’s proposal to implement a migration risk factor for Ameren customers for essentially the same reasons. (*See* Staff Init. Br. at 172-74.)

Although Staff accurately acknowledged that the Coalition “relied upon the evidence provided in the ComEd docket” (Staff Init. Br at 172), Staff inappropriately dismissed the Coalition’s proposal as “arbitrarily applying conclusions from the ComEd proceeding to the Ameren proceeding.” (Staff Init. Br. at 174.) The assertions made by Ameren and Staff fail to recognize the important realities about the Coalition and the Illinois market: the Coalition members have spent the last five (5) years interacting with customers and customizing solutions to their specific supply needs; and, in seeking to understand the Illinois market, stakeholders at every level will perform analyses designed to provide some certainty to an otherwise uncertain competitive landscape.

Ameren consistently has opposed competition in its service territories and now it attempts to rely on the Companies’ success in stifling competitive development as the justification to erect additional obstacles to bar customers in the Ameren service territories from experiencing the benefits of competitive choice.

Additionally, there is no foundation on which the Commission should believe that Ameren’s migration risk factor resistance is isolated to “this case only.” As the Commission surely has learned by now, Ameren is best judged by its actions, not by its words.

Given the Commission’s mandate to develop competition throughout Illinois, it is reasonable to make projections regarding one market using data from a neighboring, related market where ComEd generally embraced competition in its non-residential markets. In fact, numerous expert witnesses have testified that wholesale suppliers *will* make assumptions about

the migration risk factor, and that these assumptions *will* be informed by the observations and experiences of prior switching behavior. (*See* CES Init. Br. at 51; O'Connor Tr. at 267; IIEC Init. Br. at 29-31; ICC Docket No. 05-0159, ComEd Ex. 3.0 at 797-877.) Pretending that this risk factor does not exist will not make it go away.

Although there is a dearth of the kind of quantitative metrics that Ameren and Staff seek to calculate a migration risk factor in the Ameren service territories, there nevertheless is a reasonable basis upon which the Commission may make assumptions about customer behavior generally. The uniformity in auction procedures and products sought to be implemented through the instant proceeding should help to ensure that suppliers and customers will have the incentive to behave similarly within the ComEd and Ameren service territories. Indeed, Staff endorsed the concept of Ameren and ComEd conducting parallel auctions because it believes that the Ameren and ComEd products would be viewed by bidders as having similar risks and characteristics. (*See* Staff Init. Br. at 76-78.) As discussed previously in this Reply Brief, in seeking to strive toward the competitive goals of the Choice Law, the Commission should seek to overlay ComEd's successes onto Ameren and not drag down the ComEd market by adopting Ameren's policies.

As with many of the Coalition's recommendations in the instant proceeding, the Coalition recommends that the Commission adopt similar structures for Ameren and ComEd. The goal of the translation mechanism is to properly allocate costs (higher prices) to those customers who caused those costs (that is, who are responsible for the additional costs that cause prices to be higher). One of the relevant costs to be assigned is the cost associated with the possibility that customers may migrate away from the utility supply and to the competitive market. (*See* CES Init. Br. at 48.) As Ameren has recognized, the Companies' rates should

reflect the fact that, all else being equal, the auction price should be higher for a customer class that has exhibited a greater propensity to choose RES service rather than remain on utility supply. (*See* CES Init. Br. at 48; Ameren Ex. 3.0 at lines 72-78; Blessing Tr. at 482-83.)

As discussed at length in the Coalition’s Initial Brief and in the instant Reply Brief in section VII(B)(6)(a), the Coalition presented un rebutted evidence that failing to properly allocate the migration risk premium would inappropriately shift costs onto smaller commercial and residential customers.⁹ (*See* CES Init. Br. at 49.) Just as the Prism – as proposed by Ameren – contemplates the differences in load patterns among customer groups under 1 MW for computing supply charges, it should take into consideration differences in migration risk among customer groups. Ameren has admitted that wholesale suppliers are likely to consider these relative differences in migration risk when formulating their bids. (*See* Ameren Ex. 3.0 at lines 72-85.) Rather than failing to include any migration risk factor, the Commission should order Ameren to revise its assumptions regarding customer migration so that it relies upon the available empirical data.¹⁰ By doing so, the Commission would ensure that costs are properly charged to the “cost causers.” (*See* Staff Init. Br. at 52.)

The Coalition respectfully asks the Commission to reject the proposals of Ameren and Staff to eliminate the migration risk factor from the translation methodology calculated in Rider MV, and instead, to order Ameren to revise its migration risk factor to more accurately assign costs to each customer class.

7. Rider MV – Supply Procurement Adjustment

⁹ Indeed, Ameren witness Blessing agreed with this conclusion. (*See* Tr. at 492-93.)

¹⁰ Albeit on a different issue, Ameren has recognized that when Ameren-specific data is unavailable, it is appropriate to rely upon data from other jurisdictions. (*See* Cooper Tr. 263.)

The Commission should direct Ameren to revise its proposed Supply Procurement Adjustment (“SPA”) tariff in order to ensure that supply-related costs are appropriately recovered from customers who take supply from Ameren. Although Ameren agreed with the Coalition position that the SPA should be tracked in the MVAF, the Coalition also made various recommendations to improve Ameren’s methodology to calculate and assess the SPA which Ameren failed to adequately address. (*See* CES Init. Br. at 51-55.) Specifically, the Coalition noted the lack of specifics in Ameren’s proposal regarding the amount and methodology for determining the SPA; identified additional costs that Ameren may not have considered; observed that Ameren failed to specify what costs should be included in the SPA; and explained that Ameren did not identify a reasonable allocation methodology for these costs. (*Id.*)

Ameren did not address the Coalition arguments and, instead, continued the Companies’ insistence that the Coalition’s proposals are premature, because, after all, Ameren merely sought the Commission’s approval of “placeholder” language regarding the SPA. (Ameren Ex. 16.0 at lines 70-82.) As articulated in the Coalition’s Initial Brief, the Commission should require Ameren to address the mechanics of the SPA within this proceeding. (*See* CES Init. Br. at 51-55.)

Staff, in its Initial Brief, continued to insist that the SPA change should not be tracked in the MVAF (Staff Init. Br. at 176-80) despite Ameren’s indication that the Companies would accept the Coalition’s recommendation. Staff either misunderstands or mischaracterizes the Coalition’s position. The Coalition proposal appropriately recognizes that the direct and indirect costs of procuring and administering power and energy supply to be recovered through the SPA are part and parcel of the overall costs of auction service that includes wholesale power supply costs. The SPA is a cost element in the same sense that wholesale power supply costs obtained

through the auction process are elements of cost. Further, the Coalition’s proposal is reasonable in that it comports with a key goal of the auction process: to provide for recovery of costs in as accurate and complete a fashion as possible.

Accordingly, as discussed in the Coalition’ Initial Brief at pages 51 to 55, the Coalition respectfully asks the Commission to direct Ameren to ensure that all direct and indirect costs associated with the service of arranging for the Companies’ supply of electric energy are allocated taking into consideration the relevant characteristics of the customers’ demands on the electric utilities systems. In addition, the Commission should direct Ameren to allocate the SPA evenly per kWh, rather than by a fixed-dollar amount per account, per month, and should be tracked in the MVAF to ensure that Ameren neither over- nor under-collects for this expense.

8. Rider MV – Market Value Adjustment Factor

(See VII(B)(7).)

9. Rider MV – Subsequent Review / Contingencies

(See V(J).)

C. Additional Tariff and Rate Design Issues

3. Rider D – Default Supply Service Availability Charge (“DSSAC”)

Ameren seeks to impose upon RES customers a form of “exit fee” or “post-transition customer transition charge” for a service that RES customers do not utilize. *(See CES Ex. 3.0 at lines 242-44.)* As designed, the DSSAC is a baseless, anti-competitive charge that would deter customers from switching to RESs. *(See id. at lines 244-45.)* No party other than Ameren supports the DSSAC; several parties strongly oppose it; and no similar fee has been proposed in the ComEd procurement proceeding. Accordingly, the Commission should simply reject Ameren’s proposed DSSAC.

Ameren suggested that opposition to the DSSAC is driven by “parochial interests” on this “particular issue.” (Ameren Init. Br. at 143.) Yet, as Ameren itself acknowledged, there is a range of opposition to the DSSAC from a variety of parties who do not agree on other important issues in this proceeding. (*See* Ameren Init. Br. at 141-43, recognizing opposition from Staff and the IIEC, as well as the Coalition.)

Staff and the IIEC opposed the DSSAC for a number of reasons. (*See* Staff Init. Br. at 193; IIEC Init. Br. at 46-50.) Staff noted the complete lack of any evidence to show: (1) that winning bidders would reduce their bids by the amount of the DSSAC (rather than just pocket the extra DSSAC revenue) or (2) that any supplier would not bid unless it receives DSSAC revenue. (*See* Staff Init. Br. at 193.) Staff also recognizes that “RES customers would pay twice for capacity, once to their RES suppliers, and a second time in the form of the DSSAC.” (*Id.*) Staff further observed that it is “unfair to charge customers for a service, (i.e., Rider RTP-L), that most customers do not want and have no intention of taking.” (*Id.*) Staff further stated that the DSSAC would “detract from competition.” (*Id.*)

The IIEC also strongly opposed the imposition of the DSSAC because the DSSAC “has no cost basis and it applies Rider RTP-L related rates to customers who do not take service under Rider RTP-L.” (IIEC Init. Br. at 46.) The IIEC emphasized that even Ameren’s own witness, Mr. Cooper, conceded that the DSSAC is not based on any Illinois data. (*See id.* at 47, *citing* Cooper Tr. 263.) On this matter, the IIEC echoes Staff and the Coalition’s argument that ComEd has not proposed a similar Rider in its wholesale procurement proposal and pointed out that Ameren is the only party to these consolidated proceedings other than Ameren supported the DSSAC. (*See id.* at 48.)

Although Ameren previously attempted to justify the DSSAC as a form of “insurance,” Ameren appears to have abandoned this justification, perhaps recognizing, as IIEC explains, that Coalition witness Dr. O’Connor completely undercut the purported insurance analogy. (*See* IIEC Init. Br. at 50; CES Ex. 4.0 at 783-85; CES Init. Br. at 56-57.) Ameren now describes the DSSAC as “a proxy for the capacity planning costs” imposed by BGS-LRTP customers that “will produce a revenue stream to be returned to those suppliers who win the BGS-LRTP bid.” (Ameren Init. Br. at 140.) Adding to the confusion, Ameren pointed to New Jersey’s historic experience to justify the proposed DSSAC, but then admitted that “[r]ecently the Rider D charged in New Jersey was *discontinued* as a separate charge for customers.” (Ameren Init. Br. at 141, emphasis added.) Finally, Ameren retreated from its own numbers, admitting that its own witness, Mr. Cooper, concluded that the proposed DSSAC charge (\$0.015 per kilowatt hour) “may not be the exact value needed to entice suppliers,” saying only that it “bear[s] a relationship” to some theoretical proper charge. (*Id.*)

Ameren attacked the Coalition’s opposition to the DSSAC by suggesting that the Coalition has a vested interest in defeating the DSSAC because the Coalition’s potential customers will be the parties required to pay the DSSAC if they switch. (*Id.* at 141-42.) Thus, it appears that Ameren recognizes the anti-competitive nature of the DSSAC. That is, the Companies understand that the DSSAC will impose an additional cost upon customers who switch, a cost that would not be borne by those same customers if they did not switch. Ameren knows that, all else being equal, the addition of such a cost makes it *less likely* that customers will switch. Thus, Ameren’s position demonstrates that the DSSAC is palpably (and very simply) anti-competitive.

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

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

(*See* VII(B)(6).)

6. Treatment of Uncollectibles

As discussed in the Coalition’s Initial Brief at pages 57 to 58, the Commission should order Ameren to account separately for uncollectible expenses between “delivery services”-related uncollectible expenses and “energy”-related uncollectible expenses, and to charge customers accordingly. (CES Init. Br at 57-58.)

Both Ameren and Staff discuss the tracking and methodology for uncollectible expenses. (*See* Ameren Init. Br. at 144; Staff Init. Br. at 194-96.) Ameren previously agreed with the Coalition’s recommendation to separate uncollectible expenses between delivery and energy supply customers. (*See* Ameren Ex. 16.0 at lines 93-112). In its Initial Brief, Ameren additionally indicated that, pursuant to Staff’s recommendations, the Companies would omit specific reference to establishing a “factor” based on the relative relationship of total uncollectible expenses to total bundled revenue amounts and instead agrees that the Commission should determine both the methodology and value for the uncollectible adjustment in Ameren’s delivery services rate case. (*See* Ameren Init. Br. at 144.) The Coalition has no quarrels with this broader language proposed for Rider MV. However, as discussed in Coalition Initial Brief

at pages 57 to 58, the Coalition reaffirms that Ameren should allocate energy-related uncollectibles to those customers who choose or remain with Ameren as their energy supplier.

8. Integrated Distribution Company Issues

One of the most objectionable (and perhaps the most telling) positions taken by Ameren was in response to the Coalition's reasonable proposal that the Commission, Staff, and interested parties should have an opportunity to review the "educational" materials that Ameren intends to distribute to customers explaining impending changes in their supply options.

Ameren's rates and tariffs are about to undergo a profound change as a result of its new procurement process: some rates will be discontinued; new rates will be offered; and the economics underlying all of Ameren's rates are going to be impacted. Obviously, customers are going to have to be informed about these substantial changes. To assist Ameren's dissemination of objective educational materials to the public that comport with the Commission's "Integrated Distribution Company" rules, the Coalition recommended that the Commission direct Ameren to initiate a separate docketed proceeding for consideration of new procurement process communication materials. (*See* CES Init. Br. at 61-62.)

As expected, Ameren's response was to protest the Coalition's modest proposal. (*See* Ameren Init. Br at 144-45.) Specifically, Ameren asserted that such a separate proceeding would be "ludicrous" and a "profound waste of time" because: (1) utilities' "well-trained" employees are constantly communicating with their customers and Ameren's employees are "fully aware of the prohibition against marketing, advertising and promoting [Ameren's] retail energy supply"; (2) there would be no appropriate time at which to initiate a proceeding to cover a finite universe of communication materials; and (3) "it would be purposeless to engage in

active litigation for each and every rule that requires some amount of utility compliance.” (Ameren Init. Br. at 145.) In short, Ameren claimed it will be business as usual.¹¹

Despite Ameren’s snide protest to the Coalition’s modest proposal, the Commission should not dismiss the importance of a separate proceeding in which the Commission, Staff, Ameren, and other interested parties may evaluate the Companies’ post-transition communication materials. A separate docketed proceeding is necessary precisely because Ameren “is always in communication with its customers.” (Ameren Init. Br. at 144.) The initiation of a separate docketed proceeding will appropriately acknowledge that the way in which the utility is to interact with its customers regarding their new supply options differs from those interactions that occurred during the transition period. It is beyond dispute that Ameren will develop materials to describe and explain customers’ post-transition generation options, and these marketing materials will dramatically differ from marketing materials that Ameren might have developed during the transition period. Rather than wait for a misstep in communication that may yield a formal Commission complaint or investigation, Ameren should welcome the early opportunity to discuss these important pieces of consumer education. Furthermore, regardless of Ameren’s interaction during the transition period, during which rates were frozen, the Commission should be concerned about the manner in which Ameren proceeds into the post-2006 period, when the Companies’ supply may come from an affiliated company at a market-based price.

¹¹ In response to the question whether he would agree that Ameren’s customers supply options are going to change substantially following the transition period, Ameren witness Robert Mill responded: “Not really. They’ll have an ARES supply option and they’ll have a utility supply option.” (Tr. at 239.)

Quite the opposite of seeking “active litigation for each and every rule,” the Coalition simply believes that interested parties should be provided an opportunity in an open forum to ensure that Ameren strikes the appropriate balance between informing customers of available supply choices and ensuring that these materials contain no bias or favoritism that would direct customers toward Ameren’s supply options. (*See* CES Init. Br. at 61; CES Ex. 3.0 at lines 417-20.)

Given the dramatic and fundamental changes that will occur in customers' options at the end of the transition period, Ameren's marketing and communications materials should undergo some scrutiny and review by the Commission Staff and interested parties prior to their dissemination to the public. (*See* CES Init. Br. at 51.)

In fact, given Ameren’s resistance to the development of retail competition and its failure to acknowledge these fundamental changes in the retail market, there is no reason for the Commission to trust that Ameren’s “well-trained” employees would appropriately identify prohibited marketing materials. The IDC rules should be implemented to ensure there is no bias that would direct customers toward necessarily taking those supply options offered by the utility. (*See* CES Init. Br. at 61-62; CES Ex. 3.0 at lines 417-20.) Given the present low level of competition in the Ameren service territories, initiating a separate docketed proceeding would be the most effective and efficient way of ensuring that the interests of competition are protected.

The Coalition respectfully asks the Commission to direct Ameren to initiate a separate docketed proceeding within thirty (30) days of the entry of the Order in this proceeding in which such communication and marketing materials, as well as all related accounting issues, would be reviewed, commented upon, and approved by the Commission.

CONCLUSION

The time is at hand for the Commission to turn things around for customers in the Ameren service territories. The Commission should put an end to Ameren's long-running practice of obstructing and delaying the development of competitive markets -- the era of "business as usual" must end for Ameren, consistent with the Choice Act's mandate. By ordering Ameren to adopt the salient elements of ComEd's revised procurement proposal, the Commission can give competition a realistic opportunity to develop for Ameren's customers.

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

- (1) Adopts Ameren's proposed BGS tariffs, with the modifications proposed by the Coalition;
- (2) Adopts the Coalition's recategorization of Ameren's auction products so that customers between 400 kW and 1 MW of demand are included together with business customers above 1 MW in demand in the blended, multi-year auction product group, making the customer groupings across ComEd and Ameren more similar in their characteristics for purposes of the contemporaneous auction;
- (3) Adopts a migration risk premium allocation factor or adopts the Coalition's suggestion of applying the single year auction product to all customers over 400 kW;
- (4) Establishes an appropriate date for the initial auction to take place (which may be September 2006 if other revisions are ordered, but the record evidence also would a May or July 2006 auction);
- (5) Requires Ameren to revise its proposed 30-day enrollment window and adopt a 75-day enrollment window, or alternatively, revise its customer groupings and provide for an 50-day enrollment period in the initial auction, followed by 45-day enrollment periods thereafter, mirroring the proposal supported by ComEd in ICC Docket No. 05-0159;
- (6) Eliminates the anti-competitive, highly discriminatory, non-bypassable Rider D fee on customers who purchase supply from RES.
- (7) Directs Ameren to ensure that the Supply Procurement Adjustment is properly designed with an emphasis on cost recovery through a per kWh volumetric charge so as to more accurately relate prices to cost on a customer class basis;

- (8) Directs Ameren to separately account for the uncollectible amounts related to delivery services customers and bundled services customers by class;
- (9) Directs Ameren to properly recognize and incorporate into Ameren's proposed BGS-RTP products the increased uncollectible expenses rate resulting from real-time customers being exposed to wide variability in hourly prices;
- (10) Directs Ameren to ensure that new customers to the Ameren system are fully eligible to elect delivery services on the first day of service rather than having to take bundled service for the initial month; and
- (11) Grants such other further or different relief as the Commission deems just and reasonable.

Respectfully submitted,

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