STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

<u>REPLY BRIEF OF THE AMEREN COMPANIES</u>

November 2, 2005

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I. Executive Summary (Introduction)

The initial briefs filed in these proceedings show that the overwhelming majority of parties support establishing a "vertical" or "full requirements" auction to procure the supply needed to serve retail customers beginning on January 1, 2007. The only resistance comes from two parties, CUB and AG, who offer only demonstrably incorrect readings of the PUA. CUB's and AG's torturing of the PUA and related case law are ultimately unhelpful; indeed, these parties themselves can point to no option for the Ameren Companies but to purchase power from the wholesale market after January 1, 2007. Most parties understand that the Commission's focus on this case must be to ensure that the procurement method established in this docket will result in just and reasonable rates and will promote the Restructuring Act's long-term goals for achieving a viable, least-cost, long-term energy solution for Illinois customers.

The proposed competitive procurement auction ("CPA") is designed to produce such results. The CPA is a proven mechanism with widespread support, designed to achieve stable rates and to secure the lowest price attainable in the marketplace. The CPA process adopts a descending clock auction format in which the lowest priced bidder wins the right to supply power – an established technique that will stimulate vigorous competition among numerous suppliers to drive costs down. As Staff and most parties agree, the proposal is consistent with state and federal laws and reflects sound public, economic and regulatory policy.

The record evidence in this case demonstrates that the proposed CPA will allow the Ameren Companies to secure reliable electricity supply at the lowest-available price. Through implementation of the proposed CPA, Illinois will continue the progress it has made since the Restructuring Act's passage, to become a national model for consistent, stable success in electric utility industry restructuring.

II. Need for Commission action

AG's argument that the Commission need not act in this docket (AG Init. Br., p. 3) is simply wrong. As the majority of the parties have noted repeatedly, the Ameren Companies have divested their generation assets as authorized by Section XVI of the Public Utilities Act (220 ILCS 5/16-101, the "Restructuring Act") and must go to the wholesale marketplace to purchase power for electricity service after January 1, 2007. (Ameren Companies Init. Br., Section III.) In establishing and investing in the Post 2006 Initiative process, the Commission and all participants recognized the importance and the need for collaboration in determining how such power will be procured.

The Ameren Companies must have a means of fulfilling their obligation under Section 16-103 of the PUA to continue to provide "bundled" electric service to millions of customers. *See* 220 ILCS 5/16-103. Moreover, the Restructuring Act's legislative findings provide that the Commission should "act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers." 220 ILCS 5/16-102. Simply ignoring the immense collaborative effort of stakeholder participants in the Post 2006 Initiative process, the results of that process (which called for establishing an open, transparent, market-based procurement approach), as well as the vast, complete, and carefully adjudicated evidentiary record in this case would be contrary to the Restructuring Act's goals, the Commission's mandate, and Illinois public policy.

III. Legal issues

The majority of parties in this case agree with the basic framework of the Restructuring Act and the guiding legal principles at issue in this case, as described in the Initial Brief of the Ameren Companies. This Section only replies to discrete incorrect statements of the law raised in the initial briefs filed by CUB and AG. The Ameren Companies disagree with the CUB and AG's statement of the law in three principal respects. First, as the Ameren Companies have made clear, the proposed tariffs do not constitute illegal "market-based rates," and the Commission has clear authority to approve them under Articles IX and XVI of the PUA. Second, the tariffs are not illegal "blank" rates, but are legal formula rates, which the Commission has well-established authority to approve. Third, the Commission does not have authority under the *Pike County* decision to assess the reasonableness of wholesale rates.

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

The AG (Br., p. 2) invites the Commission to extend the transition period. The transition period was established by the General Assembly and can only be extended by the General Assembly. The Commission cannot do so, regardless of whether the Commission might think it a good or laudable idea. *Ill. Commerce Comm'n et al. v. N. Y. Centr. R.R. Co. et al.,* 398 Ill. 11, 16 (1947) ("The Commission has no arbitrary powers. . . . It derives its power only from the statute and has no authority except such as is expressly conferred upon it."). Moreover, the Commission cannot extend the rate freeze that expires when the transition period ends. The Commission must set rates that will afford the Ameren Companies an opportunity to recover their prudently incurred costs of providing utility service.

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

In their initial briefs, CUB and AG argue that the ICC does not have authority to approve the tariffs under the Act, because (1) service has not been declared competitive and the Commission may not approve "market-based" rates; (2) the Commission does not have authority to approve a "blank" rate; and (3) the Commission may not "pre-approve" auction results without the possibility of an after-the-fact prudence review. (CUB Init. Br., pp. 5-10; AG Init. Br., pp. 8-

13). The Ameren Companies set forth a complete discussion of the ICC's clear authority to approve the proposed tariffs and CPA in its Initial Brief (Ameren Companies Init. Br., pp. 8-15), and addresses each of the above arguments in turn.

First, Regardless of what CUB and AG argue, the Ameren Companies have not asked the Commission to determine whether their proposal satisfies the market-based cost requirements of Section 16-103(c) of the PUA. That section addresses ratemaking for competitive services. Rather, the issue here is whether the Ameren Companies' tariffs reflect "just and reasonable" retail rates based on reasonable, prudently incurred costs. The Ameren Companies have asked the ICC to approve (and oversee) a competitive bidding process that by its nature (i.e. inviting the merchant to bid in a fair and transparent auction) will produce the least-cost source of supply, thereby satisfying the requirements of Article IX.

As the Ameren Companies set forth in their initial brief, the ICC may approve tariffs that automatically pass through to retail customers the prudently incurred costs a utility incurs purchasing commodities in the wholesale market, as the Companies' proposed tariffs provide, under the traditional ratemaking standards of Article IX that continue to apply to the Ameren Companies' non-competitive service rates. For example, in *City of Chicago v. Illinois Commerce Comm'n*, 13 Ill.2d 607 (1958), the Supreme Court reviewed an ICC order approving a Peoples Gas tariff for retail rates "providing for an automatic adjustment from time to time . . . to reflect changes in the wholesale cost to Peoples of natural gas purchased." 13 Ill.2d at 608-09. The Court explained that the gas utility's tariff "provides for increases or decreases in the charges for gas sold by Peoples . . . to the extent of increases or decreases in the wholesale price of such gas" (*id.* at 609), similar to the Ameren Companies' tariffs at issue here. The Court rejected claims that the ICC had no authority to approve such a tariff, and that "an automatic increase in the charge to consumers, based on an increase in the wholesale cost of gas, is illegal since there is no provision for a public hearing when each additional increase becomes effective," *Id.* at 611, 612, and held that the ICC "acted reasonably and within the ambit of its statutory authority." *Id.* at 619. As the Court explained, the ICC's "statutory authority to approve rate schedules embraces more than the authority to approve rates fixed in terms of dollars and cents," but encompasses the authority to approve a rate "formula," including an "automatic adjustment clause" whereby retail rates depend on the utility's wholesale costs. *Id.* at 611.

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

*Second, d*espite CUB and AG's arguments to the contrary, the Ameren Companies are not asking the Commission to approve a so-called "blank" rate. CUB and AG argue that "[t]he ICC cannot approve proposed tariffs that contain no actual rates or charges and that grant a utility the prospective right to establish rates in the future," citing *Citizens Utility Board v. The Illinois Commerce Commission, 275* Ill. App. 3d 329, 655 N.E.2d 961 (1st Dist. 1995). This argument propounds an incorrect characterization of the proposed tariffs at issue and incorrectly interprets *Citizens* holding. In *Citizens,* the Court struck down a tariff based on yet-to-be determined negotiated agreements, *Id.* at 332-33, but made it clear that it did not bar riders containing a mathematical formula under which rates would fluctuate with wholesale power costs." *Id.* at 339-340. To the contrary, the Illinois Supreme Court has pointed out that an adjustment mechanism can provide a more "accurate and efficient means of tracking costs and matching such costs with recoveries" than would a general rate case. *See Citizens Util. Bd. v. Ill. Commerce Comm'n.,* 166 Ill. 2d 111, 121 (1995).

The proposed tariffs in this case, like the tariffs in *City of Chicago*, contain a "parameter of rates" - a formula based on the actual wholesale cost of supply. Here, the Ameren Companies' proposed tariff, Rider MV, determines the "market value of electric power and energy" based on the results of an open, multi-party CPA process for standard products, and contracts that, in fact, define the actual market value of power and energy in the Ameren Companies' footprint. The auction process at issue does not allow the Ameren Companies to set their own rates, based on discretionary negotiations between interested parties, but is set forth in a tariff filed pursuant to Article IX, and is subject to extensive review and control by the Commission to ensure that the process is objective, transparent, fair and wholly independent of the Ameren Companies. The Ameren Companies' charges under the tariffs would thus reflect the actual costs resulting from a fair and open auction in which the lowest bidder wins. Far from damning the proposed tariffs, *Citizens'* language supports them.

In addition to its Article IX authority, the Commission also has ample authority to approve the proposed tariffs under Article XVI, as set forth more fully in the Ameren Companies' Initial Brief. Article XVI charges the Commission with "promot[ing] the development of an effectively competitive electricity market that operates efficiently and is equitable to all customers." 220 ILCS 5/16-101(d). As the Commission has observed, the General Assembly "envisioned greater reliance on market forces" in the setting of just and reasonable electricity rates following passage of the Restructuring Act. Executive Summary, Final Report of the Illinois Commerce Commission's Post 2006 Initiative , p. 2. Section 16-

112 of the Act explicitly empowers the Commission to determine the price of electric power and energy based on its "market value." Specifically, the Commission may approve "a tariff that has been filed by the electric utility with the Commission pursuant to Article IX of the Act and that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy."

Third, CUB contends that the proposed tariffs would violate the PUA because there will have been no determination as to whether costs were prudently incurred. (CUB Init. Br., pp. 5-6, 11.) Ameren Companies preliminarily note that there is not now, nor has there ever been, any requirement that the Commission hold a hearing to determine the prudence of every cost incurred by a regulated utility. Typically, good faith is presumed on the part of a utility's business managers, and a prudence review is only necessary where facts and circumstances present a question as to the propriety of a cost incurred by a utility. *W. Ohio Gas Co. v. Pub. Utils. Comm'n of Ohio,* 294 U.S. 63, 72 (1935) ("Good faith is to be presumed on the part of managers of a business. In the absence of a showing of inefficiency or improvidence, a court will not substitute its judgment for theirs as to the measure of a prudent outlay.") (internal citations omitted); *see also Missouri ex rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm'n of Mo.,* 262 U.S. 276, 288-89 (1923). And in these proceedings, the Ameren Companies have proposed an auction process that would eliminate all discretionary decision-making with respect to energy procurement supply and cost, thereby eliminating all questions as to the prudence of energy procurement costs as well.

Establishing before-the-fact Commission approval of the Ameren Companies' proposed method for procurement is reasonable and appropriate, as the prudence of any given expenditure is determined from a forward-looking perspective, based on knowledge available to the utility at the time of purchase:

> Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made. In determining whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible.

Ill. Power Co. v. Ill. Commerce Comm'n, 245 Ill. App. 3d 367, 371 (1993). This framework for a proper prudence analysis is based upon Supreme Court precedent establishing that a utility has the right to recover its prudently incurred expenses and earn a fair return on its investments of capital used to provide service to ratepayers. *See Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 391 (1944); *Bluefield Waterworks & Improvement Co. v. W. Va. Pub. Serv. Comm'n.*, 262 U.S. 679 (1923).

Contrary to CUB's unusual assertions, the Ameren Companies' proposed auction process removes virtually all discretion from the utility in the procurement process, as well as any possibility of an inefficient or otherwise imprudent outlay. Indeed, the principal goals of the auction process are to ensure that contracts are efficiently, competitively and fairly awarded to the lowest price bidder. These goals are consistent with the results of the Post-2006 Initiative workshop process (as set forth more fully in the Ameren Companies' Initial Brief, Sections I, II, and III.D) and Illinois public policy, as stated in Section 5/1-102 of the PUA:

> [T]he goals and objectives of [public utility] regulation shall be to ensure
>
> (a) Efficiency: the provision of reliable energy services at the least possible cost to the citizens of the State; in such manner that

> . . .
>
> (ii) all supply and demand options are considered and evaluated using comparable terms and methods in order to determine how utilities shall meet their customers' demands for public utility services at the least cost . . ..

220 ILCS 5/1-102.

CUB's laundry list of so-called "discretionary actions" that the Ameren Companies could take is not just wrong, but absurd, given the nature of the alternative recommendations of Dr. Steinhurst. As pointed out in the Ameren Companies' Initial Brief (pp. 113-116), Dr. Steinhurst's "actively managed portfolio" suggestions would leave virtually all decisionmaking up to the utility's discretion, and would be impossible to police. In contrast, the CPA process would provide "comparable terms and methods" for determining least-cost service, through a set of rules intended to isolate a single variable – price – in the process. As long as the auction's rules are followed, there would be no discretionary action by the utility for the Commission to review after the auction process is completed and contracts are executed. There would be no other action the utility could have taken under the auction rules approved by the Commission, and thus no action whose prudence requires evaluation. By the time any resulting contracts are executed, the Commission would have reviewed whether the auction rules were followed, and thus, whether the auction results should be accepted. Any deviation from the auction rules would be reported to the Commission by its auction advisor, who monitors the process throughout, and, presumably, the Commission would reject the auction.

Finally, the Ameren Companies note that, despite what CUB believes, a prudence review should *not* be an after-the-fact referendum on whether other parties like the price that resulted from the auction.[1] *Ill. Power Co,* 245 Ill. App. 3d at 371 ("Hindsight review is impermissible."). The law neither requires nor favors second-guessing of market prices under legitimately, competitively and fairly awarded contracts. A prudence review is intended only to determine whether a utility exercised its discretion reasonably. Here, because the proposed auction process would eliminate virtually all discretionary procurement decision-making, a post-auction prudence review is unnecessary.

C. Relationship of Illinois and federal law and jurisdiction

The AG argues that ICC has authority to determine whether the cost of wholesale electricity purchased at FERC-approved wholesale rates, was prudently and reasonably incurred, citing *Pike County Light and Power Co. v. Pennsylvania Public Utility Commission*, 77 Pa.Cmwlth 268, 465 A.2d 735, 738 (PA 1983).The AG turns the *Pike County* case on its head. In that decision, the court explained that, while the states could not adjudge the reasonableness of FERC-jurisdictional rates, the states did have authority to determine the reasonableness of the choice of available options at FERC-approved rates. The court made clear what a state can and cannot do: a state agency cannot undertake "an analysis of [the wholesale seller's] cost of service data, analysis within the exclusive jurisdiction of FERC"; a state agency can undertake an analysis of the utility's "cost of service and comparison with alternative costs of purchased power." The AG wants the Commission to do exactly what the Supreme Court in *Nantahala* and the court in *Pike County* said it cannot do: review the reasonableness of wholesale rates. The

[1] Further, the Commission only has jurisdiction over the procedure of a retail utility's selection of a particular wholesale transaction or transactions from available options, not over the wholesale price of energy itself. *See Miss. Power & Light,* 487 U.S. at 372; *Nantahala,* 476 U.S. at 970; *G.M.,* 143 Ill.2d at 421. Thus, an after-the-fact prudence review of prices resulting from the auction, as the Movants apparently propose, would fall outside the Commission's jurisdiction.

ICC, the AG argues (Br., pp. 18-19), has broad authority to obtain data from wholesale suppliers, including "generation costs and other data" that the Commission would need "to determine whether costs are reasonable and prudent."

The Commission would never need "generation costs" to determine whether a wholesale purchase is prudent. The Commission may only compare the purchases made by a utility with other options available to it in the market. The Commission may not determine that a wholesale supplier's price was too high in relation to the supplier's cost; the Commission may only determine whether the supplier's price was too high in comparison to other options available to the utility. Moreover, other options for comparison purposes are what other entities are offering to sell at, not what the Commission believes they should be selling at.

The AG's reading of *Pike County* erases any boundary between federal and state jurisdiction and would give the Commission power to determine whether a wholesale rate is reasonable. The Commission does not have that power, and any Commission order that arrogates that power to the Commission is destined for reversal.

The AG tries to evade the *Edgar* standard by assuming that the Ameren Companies' generation affiliates will sell to them below market, and then arguing that the Companies could then come up with some basis for convincing FERC that the sales are reasonable. The assumption is a baseless one - as we have explained repeatedly throughout this case, there is no reason to assume, suspect or fantasize that the Ameren Companies have access to below-market power.

Moreover, there is no reason to believe that the FERC would bless an Ameren procurement plan that involves no competitive bidding of any sort. As we have explained, that is not what FERC did with the New Jersey and Maryland procurement regimes, and there is no reason to believe that FERC would change its mind now.

D. References to Post 2006 Initiative reports and results

E. Evidentiary issues

F. Other legal issues

IV. Sufficiency of the competitive market

We believe that our initial brief (pp. 27-44) adequately addresses the matters raised by the AG and CUB with respect to the sufficiency of the competitive market. Their criticisms of the wholesale market are, at best, incomplete and irrelevant. For example, the AG's principal criticism is that the "wholesale market' is highly concentrated. The AG's position is based on the use by its witness, Dr. Rose, of data assembled by Staff witness Sibley for the "Ameren service territory." Yet, Dr. Rose does not claim that this is the relevant geographic market, nor that the State of Illinois is the relevant market. In fact, as the AG's brief readily (but mystifyingly) admits, Dr. Rose doesn't know what the relevant geographic market is. CUB witness Rosen was similarly unable to define the market.

A. Markets' Relationship to Auction Process

B. Other Jurisdictions' Experiences with Competitive Electricity Procurement

The AG also engages in a lengthy discussion of electricity cost increases in other jurisdictions. We suppose that this is intended to convince the Commission that if it doesn't let the Ameren Companies competitively source power, rates won't go up. This is nonsense. It's like arguing that since only sick people are admitted to a hospital, if you don't go to a hospital you will never get sick. Utilities that have gone to the market have seen higher costs, so if you don't go to that market, you won't experience higher costs. We note two problems - one, the logic is flawed, and two, we still need electricity. Only the market can give us the power we need.

Competitive procurement doesn't make prices higher. It minimizes the cost of necessary purchases. We will obtain the lowest price for our customers through the aggressive competition the auction encourages. Pretending that there is some other (magical) means of procuring power at a lower price will not make it happen.

C. Retail Market Conditions

D. Relevant Product Market

1. Required products

2. Physical vs. financial markets

3. MISO capacity market

E. Relevant Geographic Market

1. Significance of political boundaries

2. MISO /PJM seam & Joint Operating Agreement

F. Market Characteristics, Including Supplier Concentration

The fact that the AG's own expert can't delineate the scope of the market doesn't stop the AG from arguing that, whatever and wherever it is, the market is too highly concentrated to conduct an auction. The possibility of market power being exercised should not be overlooked, according to the AG.

Our initial brief (pp. 34-35) explains that the appropriate market to consider is the MISO footprint. In particular, Dr. McNamara testified in this proceeding that there are more than 121,000 MW of generating capacity within the MISO footprint that are "deliverable" throughout MISO including to Central and Southern Illinois. Resp. Ex. 9.0, p. 1. Moreover, Mr. Frame explained that the ownership of generation capacity within the MISO footprint is "unconcentrated" when determined using the Herfindahl-Hirschman Index (HHI). This large amount of generation capacity (even before including potential imports), coupled with low market concentration, is fundamentally inconsistent with any realistic market power concern. Resp. Ex. 13.0, pp. 14-15. We also note that FERC allows wholesale participants to sell at market based rates within MISO because it is a competitive market, and neither CUB nor the AG offers any evidence or argument to the contrary.

G. Transmission Constraints

The AG also complains (Br., p. 39) that it will take many years to remove transmission constraints to reach a point where competitive wholesale markets can be supported. There are several flaws in the AG's position. First, it did not (and frankly, cannot) identify a single transmission constraint that affects deliveries to the Ameren service territory. Second, the study that the AG relies on is national in scope and observations and does not criticize the Ameren system or the MISO. Third, the Ameren Companies still need to buy power, and even if there were problematic transmission constraints (and we are not conceding that there are), the Ameren Companies would still have to access the wholesale market.[2]

H. Limitations on Generator Entry

I. Relationship to Service to Small Commercial and Residential Customers

J. Market Rules and Monitoring

1. MISO market rules

[2] It is by no means clear whether the AG believes that transmission constraints are a good thing or a bad thing. Immediately after complaining about transmission, the AG argues that prices could go up if Illinois utilities were to acquire power outside of Illinois (which has relatively less expensive coal) due to greater reliance in other areas on higher-cost natural gas fired units. We just don't know how to reconcile the AG's positions.

2. MISO Market Monitoring Unit (“MMU”)

3. Proposed Illinois Market Monitor

K. Other Competitive Market Issues

V. Auction Design Issues

A. General Effectiveness and Suitability

For all the reasons described in the Ameren Companies' Initial Brief, the Illinois Auction's descending clock, vertical trance auction process is a reasonable approach to procuring supply of the Ameren Companies' customers. The auction is suitable for use in Illinois. It will be an effective way to meet the Ameren Companies' customers post-2006 power supply needs.

Staff, in its Initial Brief and through its witness Dr. Salant, endorses the proposed auction concept, concluding that the auction process was an appropriate competitive procurement method for securing power supply commitments for serving the Ameren Companies' customers. As a result, Staff has recommended that the Commission approve the proposed auction process. Staff Init. Br. at pp. 26-30.

Dynegy, Morgan Stanley, and MWGen also support the proposed auction process. MWGen, for example, notes that the auction represents input from a broad range of market participants. Dynegy Init. Br. at p. 2, MSCG Init. Br. at p. 2, MWGen Init. Br. at p. 1. MWGen further notes that the proposed auction process satisfies each of the desirable attributes for a competitive power procurement process as determined by consensus in the Commission's post-2006 initiative and workshop. The proposed auction process: (a) is highly transparent and competitive; (b) encourages supplier participation of all types in the wholesale market; (c) facilitates stable rates and mitigate rate volatility; and (d) requires an initial regulatory review to approve and an ongoing regulatory review to oversee and improve the process. MWGen Init. Br. at pp. 2-5.

The Attorney General and CUB, on the other hand, conclude that the proposed full-requirements, vertical tranche, declining clock auction is not well suited for supplying electricity to the Ameren Companies' customers and that other procurement methods are preferential.[3] AG Init. Br. at pp. 44-46[4], *see also* CUB Init. Br. at pp. 17-18. Section VI, *infra,* provides a thorough discussion of the Attorney General and CUB proposed alternative procurement methods.

The Attorney General objects to the fact that the Ameren Companies' proposal allows the wholesale prices to influence the clearing price and suggests low cost bidders could receive a windfall if they receive more than their costs would require. Such objections are unwarranted for several reasons and show a fundamental failure to understand competitive markets. First, achieving market driven prices was identified as a desirable characteristic of a procurement process in the Post-2006 initiative. Resp. Ex. 3.0 at p. 27. The auction proposal meets this goal. Wholesale market prices will influence the auction prices because potential bidders have alternatives. Bidders will compare other sales opportunities to the price that could be received in

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[3] The Attorney General inappropriately cites to CUB/CCSAO Ex. 1.0. *See*, AG Initial Br. at pp. 32, 45, 47, 57, 58, and 62. This exhibit is not part of the record in Consolidated Dockets 05-0160, 05-0161, and 05-1062. Elements of the brief citing to exhibits that are not in the record should be stricken.

[4] The Attorney General incorrectly states that MISO began operations "barely seven months ago". The MISO, in fact, has been in operations for several years. Only the MISO-administered markets began on April 1, 2005.

the auction. Such potential "opportunity costs" represent the value that the bidder could achieve by not participating in the auction. If sellers are not able to sell at market prices power at the auction, sellers will take their business elsewhere. These sellers will not incur this opportunity cost by selling power to the Ameren Companies at below market prices.

CUB calls into question the Ameren Companies' reasons for proposing the auction claiming that it is designed to benefit AmerenEnergy Resources ("AER"). CUB, in essence, claims that if wholesale market prices are higher than AER's generation costs, AER will have a competitive advantage.5 CUB Init. Br. at p. 17. CUB then suggests that AER "could afford to bid an even lower price" even though they could obtain higher prices in the market. Id. at p. 18. Like any other economically rational market participant, AER would be expected to compare each round's auction price against their opportunity costs and not accept auction prices lower than its opportunity cost. There is no solution that would afford the Ameren Companies any realistic opportunity to buy power at below-market prices. Resp. Ex 17.0 at p. 8.

Finally, CUB accuses the Ameren Companies of proposing an auction process "designed to avoid or overcome FERC scrutiny." CUB Init. Br. at p. 18. As discussed in its Initial Brief, the Ameren Companies developed the auction process to satisfy FERC's scrutiny and to comply with FERC's standards. The Ameren Companies should be lauded for this goal not condemned. The Ameren Companies do not seek to hide from FERC's authority or avoid its oversight. Expecting AER to bid in the auction, the Ameren Companies designed an auction process that

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[5] CUB asserts that AER "admits" that it is well positioned as a direct bidder. CUB provides no citation to such an admission. CUB Init. Br. at p. 18. It is unclear how AER can admit anything on the record in this proceeding because it is not a party.

complies with FERC's affiliate transactions requirements. This is intended to ensuring that AER does not receive preferential treatment. Turning a blind eye to FERC's review and precedent would help no one.

B. Full Requirements Product

The full-requirements product places risk management responsibility in the hands of competitive entities that are best suited to take, manage, and price these risks. Resp. Ex. 6.0 at p. 30. This allows the Ameren Companies to concentrate on what they do best – deliver energy to the end use customer and perform customer care functions. Resp. Ex. 3.0 at p. 5. The full-requirements product also allows the BGS Suppliers to concentrate on what they do best – take on and manage all generation related responsibilities, including risk management. Id. This full-requirements approach is consistent with Ameren Companies' current supply agreements with Ameren Energy Marketing Company and Dynegy. *See, e.g.,* Staff Init. Br. at p. 31.

The Attorney General, however, argues that the full-requirements product places too great a volume risk on the BGS Suppliers and that this will result in higher auction prices. AG Init. Br. at pp. 47-48

The full-requirements product does not create risks – it is a tool for allocating risks among the parties. In this case, the full-requirements product places the risks with the party that is best situated to manage the risks. Resp. Ex. 6at pp. 30. Competitive pressures at the auction should cause bidders to manage these risks at the lowest cost. This approach can be expected to reduce the costs to the consumers. BGS Suppliers have acknowledged that they are in the best position to manage these risks. *See, e.g.,* Dynegy Init. Br. at p. 8.

Staff supports the full requirements product structure proposed by the Ameren Companies and specifically opposes the active portfolio management product structure proposed by others. Staff Init. Br. at pp. 30-31. Ultimately, the Attorney General's arguments about the full-requirements products are directed toward supporting their proposed alternative. The record does not support the Attorney General's claim that a different product structure would reduce the risk premium or provide a less risky purchasing strategy. See Section VI, *infra*, for a complete discussion of the Attorney General's proposal.

C. Multiple Round Descending Clock Format

For all the reasons described in the Ameren Companies' Initial Brief, the Illinois Auction's descending clock, vertical trance auction process is a reasonable approach to procuring supply of the Ameren Companies' customers. The auction process is "tried and trusted" and is well suited for Illinois. It will be an effective way to meet customers' post-2006 needs.

1. Load caps

The best way to obtain a reliable supply at prices that result from competition and reflect the best prices under market conditions is to encourage participation in the auction and to ensure vigorous competition among bidders. The Ameren Companies included a 35 % per auction section load cap to achieve this objective. As one of the auction's competitive safeguards, load caps limit the number of tranches that a single bidder can bid and win in the auction. Resp. Ex. 10.0 at p. 9.

Staff concluded that the proposed 35% load cap is supported by the weight of the evidence. Staff Init Br. at p. 35. Noting that the 35% load cap proposed by the Ameren Companies falls within the ranges recommended by Staff witness Dr. Salant and the Ameren Companies' witness Dr. LaCasse, Staff recommend that the Commission approve the 35% load cap per auction section as proposed by the Ameren Companies. *Id.* MWGen found that the proposed 35% load cap is appropriate and will be effective. MWGen Init. Br. at p. 6. MWGen noted that it is similar to the load cap used in the New Jersey auctions. *Id.*

Only IIEC offered arguments opposing the 35% load cap. IIEC opposes the use of any load cap - effectively, proposing a load cap of 100%. IIEC Init. Br. at pp. 12-22. Their primary objection is that a load cap has the potential to reduce the amount of power that a low cost supplier to can sell in the auction. IIEC's arguments are unpersuasive.

As described in the Ameren Companies' Initial Brief, setting a load cap involves an assessment and balancing of the costs and benefits of each of the following factors: limiting bidder participation, ability to influencing auction results, ability to over-state interest and diversification. *See,* Resp. Ex. 12.0 at p.27. Lowering the load cap might impose costs in terms of limiting participation. This is only part of the equation. This potential burden must be weighed against the expected benefits in terms of limiting overstatement of interest, curbing influence on the auction results, and promoting diversification of the BGS Supplier base. Ameren Companies' witness Dr. LaCasse concluded in her professional judgment that the proposed 35% load cap satisfies these objectives on whole while the 100% load cap proposed IIEC does not achieve a balance of all the interests. Ameren Init. Br. at p. 59.

IIEC objects to the four criteria that Dr. LaCasse (an expert in games theory and auction management) utilized in determining that the 35 % load cap reached an appropriate balance of interests and presents Mr. Collins' "common sense approach" in opposition. IIEC Init Br. at p. 19. Dr. LaCasse based her conclusions on her full evaluation of each of these criteria based on her knowledge, training, and experience. Despite its protestations, IIEC never looked beyond just one of these elements. In its narrow-mindedness, IIEC never looked to see how elimination of the load cap would affect the auction beyond the simple idea that the load cap is intended to limit participation of large bidders. In this instance, substantial expertise, knowledge and experience should prevail over one individual's perceptions of "common sense".

IIEC objects to Dr. LaCasse's testimony claiming that she failed to provide a quantitative analysis supporting her proposed 35% load cap. Dr. LaCasse's testimony provides ample basis for concluding that load caps are a valuable component of the auction design. IIEC's "common sense" approach is not persuasive and is incomplete.

Clearly misunderstanding the auction proposal, IIEC suggests that the bidder diversification gained through a load cap would not reduce the Ameren Companies concentration of default risk. IIEC bases this idea on the misconception that the supplier default risk remains the same since a BGS Supplier might sell power to other BGS Suppliers. IIEC Init. Br. at p. 20. This simply misses the mark. The Ameren Companies do <u>not</u> enter agreements with the wholesale providers selling power to a BGS Supplier. The Ameren Companies, therefore, do not have credit exposure to these suppliers. The Ameren Companies do have credit exposure to the BGS Suppliers to the extent of their BGS obligations and the Ameren Companies credit protections cannot provide 100% coverage for any and all possible credit-related risks. Resp. Ex. 14.0 at p. 5. Diversifying the BGS Suppliers necessarily diversifies credit exposure under the SFCs.

Both Staff and MWGen recommend that the Commission approve the Ameren Companies proposed 35 % load cap and reject the IIEC's 100% load cap proposal. The Ameren Companies concur.

2. Starting Prices

As described in the Ameren Companies' Initial Brief, the Auction Manager and Ameren Companies, in consultation with Staff, will set a minimum and maximum starting price for each segment of the auction. Resp. Ex. 12.0 at pp. 85-86. The Auction Manager and Ameren Companies, in consultation with Staff, also will set the starting auction prices between the minimum and maximum starting prices based on the indicative offers identified by potential bidders in the Part 2 Application. *Id.* Ameren Companies' witness Dr. LaCasse presented detailed testimony describing the purpose and mechanics of setting the starting auction prices. Staff recommended that the Commission approve this Ameren Companies' proposal. Staff Init. Br. at p. 36.

The Attorney General, however, objects to: (a) the Auction Manager having the authority to set the auction starting price; (b) the fact that a prediction of the starting price is not in the record; and (c) the fact that the starting price will be based on market data rather than cost/profit information.

As described in the Ameren Companies' Initial Brief, starting prices only determine the price in the first round not the final auction clearing price. Beginning with the first round price, bidders effectively bid prices down from the starting price until the auction achieves a balance of supply and demand. The final price is determined by this perceived value, not the starting price.

The Auction Manager does not arbitrarily set the starting prices. Rather, the starting prices are set at levels that recognize the bidders' opportunity costs – in other words, the value that a bidder would forego if it won an tranche in the auction. Starting prices are intended to represent the wholesale value of the products that will be acquired at the auction. Resp. Ex. 12.0 at p. 86. If the starting price is too low, bidders could choose to take their power elsewhere.

The Attorney General faults the Ameren Companies for not predicting the starting prices as part of this proceeding. The starting prices cannot be predicted. The Ameren Companies do not know what minimum and maximum starting prices will be set. The Ameren Companies do not know how many bidders will register for the auction and what indicative offers will be submitted in the Part 2 Applications. The Ameren Companies do not know the wholesale values upon which the Auction Manager will base the starting prices. In short, the Ameren Companies do not, at this time, know the information upon which the Auction Manager will base its starting price decisions in the future. Even if a forecast was prepared, it would be so fraught with error as to provide no value. The Ameren Companies have proposed the same procedure for setting starting price that has been used successfully in the New Jersey BGS auctions. To the Ameren Companies knowledge, the New Jersey utilities are not required to prepare long-term starting price forecasts. The Ameren Companies should not be required to do so here.

The Commission should approve the starting price mechanics proposed by the Ameren Companies and supported by Staff.

3. Bid Decrements

The bid decrement is the amount by which the tranche price falls from round to round during the auction. The Ameren Companies propose a simple bid decrement formula that accounts for the amount of excess supply for each auction product. The Ameren Companies also propose that registered bidders receive a copy of the price decrement formulas.

Staff recommended that the price decrements reveal something (but not everything) about the excess supply prevailing at the start of each auction round. Staff concluded that Ameren Companies' witness Dr. LaCasse provided a good structure for setting bid decrements. Staff Init. Br. at pp. 37-39. Staff expressly recommended approval of the Ameren Companies' bid decrement formula. Ultimately, Staff recommended that the Commission direct the Auction Manager to consult with Staff in finalizing the bid decrement formulas, which would be revealed to bidders prior to the auction in the Auction Manual. The Ameren Companies concur with these conclusions and recommendations. The Ameren Companies' proposal includes a process whereby the Auction Manager will work closely with the Staff in determining the bid decrement formulas, as well as a limited disclosure of the bid decrement formulas to bidders.

The Commission should approve the proposed bid decrement process.

4. Auction Volume Reductions

Auction volume reductions are one of the many competitive safeguards that the Ameren Companies incorporated into their auction proposal. Ameren Companies' witness Dr. LaCasse, explained that auction volume reductions provide an important safeguard against insufficient bidder interest. The auction volume reductions are not intended to control the alleged market power of suppliers selling their generation resources. Resp. Ex. 12.0 at pp. 42-44. As the Ameren Companies' Initial Brief explained, auction volume reductions sole purpose is to address a situation where auction participation is lower than expected and where auction prices may not reach competitive levels. Id. at p. 84.

Staff witness Dr. Salant recommended that volume reductions also be used to counteract bidder market power. He suggest that the Auction Manager be authorized to strategically reduce auction volumes to counteract bidder attempts to withhold power from the auction. As shown in the Ameren Companies' Initial Brief, Dr. LaCasse strongly rebutted this position. Ultimately, Staff was persuaded by Dr. LaCasse's testimony and recommend that the Commission accept the Ameren Companies' auction reduction proposal, with the following provisos: (a) Staff and the Auction Manager must still address the competitiveness of the auction in their reports to the Commission; (b) the Commission should have the final word (based on the Auction Manager and Staff reports) on the competitiveness of the auction when it determines whether to approve the auction results or to open an investigation; (c) the detailed volume reduction guidelines should be developed by the Auction Manager and Staff in compliance with the Commission order in this proceeding and that these guidelines should be held in strict confidentiality. *See*, Staff Init. Br. at pp. 37-39.

Dynegy also recommends that the Ameren Companies' proposed auction volume reduction guidelines be adopted. Dynegy Init. Br. at pp. 5-6.

The Ameren Companies concur with Staff's recommendations. The Commission should approve the proposed auction volume reduction approach.

5. Portfolio Rebalancing

a. Staff

As a corollary to the auction volume reduction, Staff witness Dr. Salant recommended that the Auction Manager be permitted to shift tranches from over-subscribed products to under-subscribed products during the auction, but only after reaching consensus with Staff that the rebalancing is appropriate. Staff Ex. 1.0 at p. 60.

Ameren Companies' witness Dr. LaCasse objected to this proposal testifying that it likely would be harmful to the auction process. Resp. Ex. 12.0 at p. 59. As explained by Dr. LaCasse, Dr. Salant's proposal would disrupt the natural flow of bidders between products at the auction. The Auction Manager cannot evaluate relative interest among products at an arbitrary moment in time. The Staff's Initial Brief noted that Dr. Salant, himself, identified other disadvantages to the portfolio rebalancing approach (including diminished Commission control over the blend of contract terms). Staff Init. Br. at p. 45.

Despite these concerns, Staff recommends adoption of Dr. Salant's portfolio rebalancing proposal. Staff also recommended that the Auction Manager develop a protocol for implementing such approach. *Id.* at p. 46.

The Auction Manager should not substitute its well-intentioned judgment for the bidders strategic decisions. The judgment of the Auction Manager, even if exercised in accordance with a rule pre-established on the basis of expected bidding patterns, is not a good substitute for this market mechanism. Resp. Ex. 12.0 at p. 59. The record does not support the use of this authority and, in fact, shows that the portfolio-rebalancing proposal would harm the auction.

Dynegy, a prospective bidder, also recommends that the Staff witness Dr. Salant's portfolio rebalancing proposal be rejected. Dynegy notes that the auction should not be a game of wits between the Auction Manager and the bidders. Dynegy further notes that bidders need certainty that the basic configuration of the auction will not vary during the auction. Dynegy Init. Br. at p. 7.

The Ameren Companies object to Dr. Salant's rebalancing proposal and recommend that it be rejected.

6. Association and Confidential Information Rules

The Ameren Companies' proposal includes Association and Confidential Information ("A&CI") rules another of the auction's competitive safeguards. The A&CI rules limit the possibility of collusive behavior, and ensure a level playing field by limiting the possibility that a bidder will have better information than another about its competitors. Resp. Ex. 12.0 at p. 7. These rules have specific measures that ensure the independence of bidders, ensure that no bidder has information about its competitors' bids, and ensure that opportunities for coordination among bidders are minimized. The A&CI rules are based upon those used successfully use in past in New Jersey BGS auctions.

Staff agrees with the Ameren Companies that an appropriate set of A&CI rules should be adopted as part of the auction framework. Staff Init. Br. at p. 47. Staff witness Dr. Salant claimed that the Ameren Companies' proposal does not go far enough. He recommended that the A&CI rules be expanded to include disclosure of supply contracts in certain circumstances – *i.e.,* auction-contingent full-requirements contracts. ICC Staff Ex. 11 at p. 41. Ameren Companies' witness Dr. LaCasse strongly objected to Dr. Salant's proposed changes noting that the proposal would have could reduce competition or increase bidder costs or both and that it could lead to increased risk of collusion. *See,* Resp. Ex. 12.0 at pp. 54-5, Resp. Ex. 18 at pp. 45-57.

Recognizing the "real potential for some negative unintended consequences" of Dr. Salant's proposal, Staff does not recommend adoption of the modifications proposed by Dr. Salant. Staff Init. Br. at pp. 46-50.

Considering these negative consequences and Staff's recommendation that it's own witness' proposal not be followed, the Commission should reject Staff witness Dr. Salant's proposal to modify the A&CI rules.

7. Tranche Size

The Ameren Companies propose a tranche size of approximately 50 MW. Staff witness Dr. Salant recommended approval of this tranche size for the first Ameren Companies auction. Based on its witness's testimony, Staff's Initial Brief also recommended that the Commission approve the Ameren Companies' proposal. Staff Init. Br. at pp. 50-51. The Ameren Companies concur with Staff's recommendation that the proposed tranche size be approved.

8. "Price Taker" Proposal

Dr. Salant proposes that large bidders be offered the opportunity to acquire tranches beyond the proposed load cap so long as the bidder acts as a "price-taker" for those tranches exceeding the load cap. ICC Staff Ex. 1 at pp. 70-71. This "price-taker" option would allow large suppliers to reserve tranches for themselves. The reserved tranches would be removed from the auction and the large supplier would supply the tranches at the auction's final clearing price.

As explained in the Ameren Companies' Initial Brief, Ameren Companies' witness Nelson testified that the price-taker option likely would not be utilized by large bidders. Resp. Ex. 10.0 at p. 13. Further, Dr. LaCasse testified that the price-taker option could harm the auction process, could deter auction participation, and could raise practical implementation concerns not addressed by Dr. Salant. Resp. Ex. 12.0 at p. 47.

IIEC also strongly objected to Dr. Salant's price-taker proposal. IIEC concluded, rightfully, that bidders would find not knowing the final auction price to be a strong disincentive to offering price-take tranches. This, in turn, could lead to a situation where the aggressive bidding behavior of low-cost suppliers would be lost. IIEC Init. Br. at p. 15.

In the end, Staff determined that it was ambivalent with respect to the implementation of its own witness' proposal and, in fact, chose to not recommend the adoption of price taker option. The Ameren Companies concur with the recommendations of Dr. LaCasse, IIEC, and Staff. The price-taker option should be rejected.

9. Other Format Concepts and Issues

None.

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

Staff notes that the proposed auction results in uniform auction clearing prices for each product. Staff Init. Br. at p. 56. Staff then reviewed and rejected Attorney General witness Reny's proposals regarding the use of bidder specific price caps in an auction and multilateral negotiations. *Id.* at p. 58. The Staff specifically recommend that these Attorney General proposals be rejected. The Ameren Companies concur with Staff's recommendation.

Section VI, *infra*, provides a thorough discussion of the Attorney General's alternative procurement proposals.

E. Auction Management

Several entities will play a key role in the implementation, administration, and oversight of the proposed auction process. These entities include: the Auction Manager, the Commission and Staff, and the Ameren Companies themselves.

1. Auction Manager

As explained in the Ameren Companies' Initial Brief, the Ameren Companies' propose to engage an independent Auction Manager who will actively manage the auction process and be the sole interface between the bidders and the auction. Ameren Init. Br. at p. 71. Staff acknowledged that the Ameren Companies have a special role as the purchasing agent for their retail customers. Staff Init. Br. at p. 63. After reviewing the Ameren Companies' efforts to reinforce the independence of the Auction Manager, and the strength of the auction process, Staff recommended that the Commission approve the Ameren Companies' proposal to hire an independent Auction Manager. *Id.* at p. 64.

Dr. LaCasse is expected to be the Auction Manager for both the Ameren Companies and ComEd. Resp. Ex. 2.0 at p. 19. Staff has reviewed Dr. LaCasse's qualifications and is satisfied that she is qualified to act as the Auction Manager. Staff Init. Br. at p. 59.

The Ameren Companies respectfully ask that the Commission authorize the Ameren Companies to engage an independent Auction Manager – most likely Dr. LaCasse – to implement and administer the proposed auction process. The Auction Manager's role is properly defined and should be approved.

2. Role of Ameren

One of the Ameren Companies' primary responsibilities is to engage an independent Auction Manager to manage the auction process from final document preparation and auction promotion through the application process and to the actual auction mechanics. There will be limited communication between the Auction Manager and the Ameren Companies once the auction begins. Resp. Ex. 10.0 at p. 17. The Ameren Companies will not be "in the room" and will receive no more information during the auction than the bidders. Id.

Staff acknowledged that the Ameren Companies have agreed that they are not permitted to direct or influence the conduct of the auction and will not communicate with the Auction Manager during the auction. Staff Init. Br. at p. 65. Between the limitations placed on the Ameren Companies and the efforts to bolster the Auction Manager's independence, Staff believes that the Ameren Companies role is properly defined. Id.

The Ameren Companies concur with this belief. The Ameren Companies' role is properly defined. The Commission should approve this approach.

3. Role of Staff

Staff states that it should play a definite role in the implementation of any auction approved in this proceeding. The Ameren Companies could not agree more. The Ameren Companies expect the Staff to have a major role in the auction process. The Ameren Companies' Initial Brief described just how the Staff will be involved before, during, and after the auction.

The Staff's role is properly defined. The Commission should approve this approach.

4. Representation of Consumer Interests / Separate Consumer Observer

The Ameren Companies' Initial Brief set out some of the many reasons why the CUB's proposed consumer observer was a bad idea. The Ameren Companies have seen nothing to change its view. The consumer observer is neither necessary nor desirable. Installation of a consumer observer could diminish auction participation if bidders feared inappropriate disclosure of confidential and proprietary information (either intentional or accidental).

Although Staff took no position with respect to CUB's proposal to include a Consumer Observer that would look over its shoulder, Staff noted that it is willing to accept responsibility for observing and assessing the auction as a neutral party. Staff Init. Br. at p. 69. Staff believes that this "is in the best interest of consumers." *Id.*

Surprisingly, CUB, the party that initially proposed the consumer observer, failed to even mention this issue in its Initial Brief. This is even more surprising considering this section of the brief outline was intended to addressing CUB's proposal. Does CUB's choice to not present argument mean that it no longer supports the consumer observer proposal? Or, does it mean that it does not care?

On a more practical matter, CUB and the Attorney General are far from neutral parties in this matter. CUB and the Attorney General have taken every step possible to stop the auction. There is no reason to believe that these parties would do no less once the auction is in place. Placing these entities in charge of the consumer observer, as proposed by CUB, would give another avenue for these parties to continue their campaign against the Ameren Companies auction proposal. CUB Ex. 2.0 at p. 24.

Once approved, the auction should be implemented and managed by the independent Auction Manager under the Commission's oversight. The Commission should reject CUB's consumer observer proposal.

F. Date of Initial Auction

The Ameren Companies propose that the first joint auction with ComEd be held sometime within the first ten calendar days of September 2006. Resp. Ex. 10.0 at p. 14.

Staff supported a September 2006 date for the initial auctions, noting that it would give the Auction Manager sufficient time to implement the auction activities. Staff Br. at p. 7. Staff concluded that it would be better to plan for a September auction now than to attempt an earlier auction and hold September as a fallback. The Staff recommends approval of the September 2006 auction. Staff notes, however, that it expects the Ameren Companies to have a contingency plan ready to present to the Commission and to Staff in the event it is needed. *Id.* at p. 71-72.

IIEC also supports holding the auction in September 2006. IIEC Init. Br. at p. 22-25. According to IIEC, the consumers would have to absorb any increased price premium attributable to the earlier auction date and the risks of changes in future market prices. *Id.* Holding the auctions in May, as proposed by CES, would require bidders to split their efforts between preparing for the peak summer season and preparing for the auction, whereas holding the auction in September would allow bidders to focus solely on the auction. Id. at p. 24. A September auction date also would be closer to the time of physical delivery, thus producing more accurate prices and reducing uncertainty that must be accounted for in the bidders' prices as a risk premium. IIEC recommends holding the auction in September 2006.

Although Constellation would prefer an earlier auction, it does not object to the simultaneous auction being held in September. CCG Init. Br. at p. 15. Constellation, however, also states that a September date would not affect its desire to participate in the auctions. CCG Ex. 2.0 at p. 2.

CES is the only party that opposes the proposed September auction. It claims that there are no technical grounds for delaying the auction until September and that an earlier date would benefit customers. In response, the Ameren Companies and other parties have explained that the September auction permits more time for the Auction Manager to prepare for the auction and that holding the auction closer to the power delivery date reduces the risk premium and results in more accurate auction prices.

The Ameren Companies have never suggested that there were technical justifications to delay the auction from May to September. That said, it is prudent to permit sufficient time after the Commission's order to allow the Ameren Companies, ComEd, and the Auction Manager to work with the Staff to finalize the auction process. These important efforts include, for example, finalizing the SFCs, finalizing the price decrement formulas, and finalizing the volume reduction guidelines. The Auction Manager also must promote the auction, develop and test any required auction software, and train the potential bidders. Whether these procedures will take 6 months or 8 months is unknown. It is better to provide a full opportunity to complete these important steps than to find that not enough time was permitted.

CES seems to prefer that more time be allotted to the post-auction period in order to fix problems that might arise. CES Init. Br. at p. 23-24. The Ameren Companies feel differently. Time and money are better spent preparing for the auction in an effort to prevent these problems from occurring in the first place. Similarly, CES argues that MISO has not experienced an auction like that proposed by the Ameren Companies and has not yet fully accommodated retail access. *Id.* Interestingly, however, CES suggests that the best way to handle this lack of experience is to shorten the time available for MISO to prepare. Once again, the Ameren Companies believe that it is better to permit the MISO to adequately prepare for the auction than to try to fix the consequences afterwards. Creating artificial deadlines so the Commission can "properly focus[]" MISO is neither prudent nor justified.

One of the key elements in the Ameren Companies' decisions to adopt a May 2006 (now early September 2006) auction was to avoid potential price volatility. The Ameren Companies' witness Nelson testified that July was relatively more volatile then September and that this increased volatility could be expected to lead to higher auction prices. Resp. Ex. 10.0 at p. 15. Price volatility varies from year to year, and volatility in every July might not exceed the volatility of every September. However, Mr. Nelson testified that summer supply shortages likely would lead to increased July volatility. In fact, he pointed to the July price peaks experienced in 1998 and 1999 as the best examples of the great price volatility that can be experienced in the month of July.

As between May and September, holding the auction closer to the power delivery date leads to additional price accuracy. This occurs in two related ways. First, simply being closer in time permits the bidders to eliminate or reduce the effects of certain variables that might affect the market price between the auction date and the delivery date. Second, and related to the first, reducing or eliminating these risks means that the bidders will need to incorporate a smaller risk premium. In other words, the bidders have a better idea what the price will be and will include a smaller risk premium. *See* Nelson. Tr. at p. 189-190.

CES claims that holding an earlier auction would permit customers – especially customers under 1 MW – more time to assess their options. CES Init. Br. at p. 22. The Ameren Companies place no limitation on these customers' ability to initially switch to or from BGS-FP service.[6] Their ability to evaluate the auction price, therefore, should not drive the auction into a riskier (and thus costlier) situation.

The Ameren Companies and ComEd have agreed to hold joint auctions. The benefit of holding a single statewide auction outweighs the benefits of either a May, July, or September

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[6] Under the Ameren Companies' proposal, residential and small business customers (0 - < 1 MW) can take service from an ARES at any time. If the customer returns to BGS service, the customer would be subject to a one-year minimum stay obligation.

auction date. Resp. ex 10.0 at p. 15. CES seems to acknowledge this in its Initial Brief. CES Init. Br. at p. 25. An early September auction date is the most reasonable balancing of interests between all parties. Resp. Ex 10.0 at p. 22.

CES has agreed that it "might be reasonable to hold a September 2006 auction" if the Ameren Companies agree to adopt certain unnamed revisions to "other portions of its proposal" that were adopted by ComEd. CES Init. Br. at p. 25. CES does not identify the revisions supposedly adopted by ComEd. The Commission should not condition the auction date based on one party's desire for certain revisions especially when that party does not take the time to identify.

The Commission should adopt authorize the Ameren Companies to hold the first auction during the first ten days of September 2006.

G. Common vs. Parallel Auction

1. Among Fixed-Price Products and Hourly Products

Based, in part, on the recommendations of Staff witnesses Dr. Salant and Ogur, the Ameren Companies and ComEd have agreed to a common auction for fixed-priced products and a separate common auction for hourly products. These two common auctions would be held in parallel - *i.e.,* at the same time. Staff recommends that the Commission approve the combining of all of the Ameren Companies and ComEd "fixed-price" products into one common auction and all of the Ameren Companies and ComEd "hourly" products into another common auction. The Ameren Companies concur with Staff's recommendation.

IIEC supports the notion of a common auction for Ameren and ComEd products and recommends that the auction process should be approved. It believes the common auction will lead to lower market clearing prices. IIEC Init. Br. at pp. 25-29. CES does not object to the Ameren Companies and ComEd holding contemporaneous auctions. CES Init. Br. at pp. 25-27.

The Commission should approve an auction that allows switching between fixed-price products and switching between hourly products but does <u>not</u> allow switching between fixed-price and hourly-price products.

2. Between Fixed-Price and Hourly Products

Staff witness Dr. Salant recognized that the Ameren Companies' proposal included separate auctions for fixed-price and hourly-price products into a single auction and noted that the potential benefits of combining the fixed-price and hourly-price products is relatively small. He, therefore, recommended approval of this proposal for the first auction. The Ameren Companies concur with Staff's recommendation and further recommend that the separate auctions be maintained until the benefits of a single auction with switching among all products are shown to exceed the downsides.

The Commission should approve an auction that allows switching between fixed-price products and switching between hourly-price products but does <u>not</u> allow switching between fixed-price and hourly-price products.

3. Between Ameren and ComEd Products

See, Sections V.G.1 and V.G.2,*supra.*

4. Common Deliverability Test

IIEC recommends that any approval of the auction process should be conditioned upon the Ameren Companies working with ComEd, MISO, and PJM "to remove … impediments to a single common power procurement market for the Ameren Operating Companies and ComEd in Illinois." IIEC Init. Br. at p. 29, IIEC Ex. 2 at p. 3. IIEC also recommends that the Ameren

Companies be required to work with those same entities "to implement … a single common deliverability test for resources within the combined MISO and PJM footprint to serve network load of the Ameren Operating Companies and ComEd within Illinois that will permit a joint auction by a date certain." Id.

Staff takes no position with respect to a recommendation on IIEC's call for these parties work together. Staff, however, calls for this proposal to be rejected if IIEC is recommending that approval of the auction be withheld until a common deliverability test is developed.

The Ameren Companies are not opposed to cooperating with ComEd, MISO, and PJM in a joint effort to implement a common deliverability test. The Ameren Companies, however, cannot control such a process. "Whether MISO and PJM ultimately develop a common deliverability test will depend upon the participation of many other market participants – most of whom are not subject to the Commissions jurisdiction – and the willingness of FERC to adopt the approach, if any, adopted by MISO and PJM." Ameren Init. Br. at p. 81.

Beyond simply calling for quarterly reports, the IIEC provided no basis for, nor illustrated any benefits that coud be achieved from the quarterly reports to the Commission regarding the progress what would be a public effort to develop a joint and common market between PJM and MISO.

The existence of a common deliverability test should not delay approval or implementation of the auction. The proposed auction process properly account for the wholesale markets. Any future improvements to the wholesale markets (through a common deliverability test or otherwise) only can improve the effectiveness of the proposed auction process.

H. Blended, Fixed Price Auction Products

1. Proposed Blends for Residential and Small Commercial Customer Supply

a. 3-Year Agreements

Residential and Small Business ("R&SB") customers with demands under 1 MW will receive a fixed-price service. Ameren Companies initially will seek to procure supply for its R&SB customers in a mix of one-year, two-year, and three-year supply periods so as to step into a three-year rolling procurement structure.

Staff concluded that the weight of the evidence supports adoption of the rolling 3-year product terms proposed by the Ameren Companies. Staff Init. Br. at p. 84. Staff observed that there is no evidence of a better way of obtaining stable, market-sensitive pricing. *Id.* Staff believed that the use of shorter-term contracts (less than one year) would lead to unstable pricing and that significant use of longer-term contracts (5 years or longer) would be inconsistent with market-sensitive pricing and might entail increased risk premiums. *Id.*

Staff recommended approval of the Ameren Companies' proposed rolling 3-year product terms (with the special transitional auction products used in the first auction to step into the MISO planing cycle.) The Ameren Companies concur with Staff's recommendation.

b. Percentage of Supply Acquired at Subsequent Auctions

See the Ameren Companies' Initial Brief and Section V.H.1.a, *infra*.

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

CES objects to the Ameren Companies proposed auction product design for customers between 400 kW and 1 MW. The Ameren Companies propose to group these customers with the smaller BGS-FP customers and acquire fixed-price power for them as part of the rolling 3-year term contract cycles. CES, on the other hand, would group them with the larger BGS-LFP customers and acquire power through a series of one-year fixed-price contracts. *See*, *generally,* CES Init. Br. at p. 29.

The foundation of the CES proposal is their belief that the Ameren Companies' 400 kW to 1 MW customers might be more likely to switch to an ARES at some point in the future than they have in the past. Historic switching patterns simply do not support this proposition. CES' own switching analysis shows that the 400 kW to 1 MW customers, as a group, are more like the BGS-FP smaller customers than the BGS-LFP customers.[7] CES points to the switching patters in the ComEd service territory as justification for modifying the Ameren Companies auction products. Such analysis loses sight of reality. The reality is that for a variety of reasons (some suspected and some unknown), the competitive retail market has developed at a different pace in the Ameren Companies service territories compared to the ComEd service territory. Regardless of reason, the markets are different. The record in this proceeding does not show why ComEd adopted a different auction product design. Potential bidders have not testified that moving the 400 kW to 1 MW customers to the BGS-LFP product would result in a lower risk premium for the Ameren Companies' residential and smaller commercial customers. Although the Ameren Companies and ComEd have worked closely together to develop uniform auction plans, there are valid reasons why certain aspects of those plans are different. Ameren Companies' witness Dr.

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[7] Ameren Companies' witness Blessing explains in surrebuttal testimony that:

> Coalition Table 4(A) (CES Ex. 4.0 at lines 618-621) shows a switching index of 13.75 for the Ameren Companies' 400 kW to 1MW customer group and a switching index of 43.25 for the greater than 1 MW customer group. Dr. O'Connor's own statistics show that the greater than 1 MW customers have roughly three times the propensity to switch as compared to the 400 kW to 1 MW customers. Even if one assumes that the switching index for the Ameren Companies with demands less than 400 kW is something close to zero (Coalition Table 4(A) does not include an index for this customer group), the switching statistics show that the propensity to switch of the 400 kW to 1 MW group of customers in the Ameren Companies' service territories is much closer to the less than 400 kW group as compared to the greater than 1 MW group (13.75 versus zero as compared to 13.75 versus 43.25).

Resp. Ex. 18.0 at p. 25.

LaCasse explained that the auction products need not be identical. Resp. Ex. 6.0 at p. 83 (discussing different contract terms).

As the Ameren Companies' Initial Brief explained:

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

- If CES' proposal is adopted metering installations will be required. Ameren Companies' witness Cooper testified that over 1000 new interval meters would need to be installed and that this process would take two years to complete. Resp. Exs. 15.0 at p. 18, 22.0 at pp. 19-20. CES opines that the lack of interval metering should not justify rejection of their proposal, suggesting that ComEd has developed load profiles for its customers and that bidders may simply rely on ComEd's data to evaluate the Ameren Companies' data. The record does not show that this is a viable option.

- The Ameren Companies' product design focuses on providing consumers with a simple, viable default service option at the lowest cost. Resp. Ex. 18.0at p.16. ARES are in a better position to determine and respond to consumers' changing needs and desires with respect to specific products and services than the Ameren Companies ever can be under the default service obligation. Id.

Staff recommends that the CES proposal to segregate the 400 kW to 1 MW customers be held in abeyance for at least one auction cycle and following the review of the subsequent switching activity. Staff also recommends that the Ameren Companies be required to begin a process of installing interval meters within the next two years on the 400 kW to 1 MW customers in a manner that would permit them to be split out in the future.

The Ameren Companies believe that the CES proposal should be rejected entirely for the reasons set forth in the Ameren Companies' Initial Brief. Ameren Initial Br. at pp. 87. If not rejected, the Commission should follow the Staff's proposal that the CES segregation plan be placed in abeyance for at least a year.

Regarding Staff's proposal that the Ameren Companies be required to install interval meters, the Ameren Companies do not oppose such a plan so long as the companies are assured full cost recovery for these incremental installation and administration costs.

3. Proposed Monthly and Quarterly Products

DES/USESC object to the Ameren Companies implementing an auction with the resulting contracts having terms of one year and greater. DES/USESC Init. Br. at p. 12. In the place of the rolling 3-year terms, DES/USESC urge an auction product design in which these customers rates would vary monthly or quarterly based on corresponding monthly or quarterly auctions. *Id.* at p. 2.

As explained in the Ameren Companies' Initial Brief, rate stability and mitigation of market volatility are two of the most important features of the Ameren Companies product design. Included in the Commission's Post 2006 Initiative Procurement Working Group's ("PWG") consensus attributes that any approved procurement process should possess was conclusion that the auction process "should facilitate stable rates and mitigate volatility for applicable customers for relevant time periods." Resp. Ex. 11 (revised) at pp. 31-32. DES/USESC's proposed product design is not consistent with these PWG concepts and cannot be procured efficiently using auctions. Id. at p. 32-35. Under the DES/USESC proposal, the R&SB customers would lose access to stable, market sensitive default service rates.

DES/USESC claim that their monthly/quarterly auction proposal would "eliminate much of Ameren's concerns regarding achieving the most 'stable, market-based rates' from the auction." DES/USESC Init. Br. at p. 14. This bold statement does not make sense. The DES/USESC Initial Brief lacks an explanation of how rate stability is achieved by changing rates on a monthly/quarterly basis. The DES/USESC proposal simply ignores the Ameren

Companies' concerns. DES/USESC's own "real-world" examples that were intended to support is position actually show a high degree of price volatility – PSE&G rates (if they were set monthly) show a change of nearly 50% from March to June, while Direct Energy's Regulated Services shows a swing in quarterly rates of over 20%.

If the DES/USESC proposal is adopted, the Ameren Companies would be required to run 16 auctions each year. These auctions cannot be operated in a light-handed fashion. Great care must be taken to protect competition in each and every one of these auctions. Administering and participating in monthly and quarterly auctions would be expensive, inefficient, and impractical. As explained in the Ameren Companies' Initial Brief, this could lead to decreased competition and increased auction prices. Ameren Init. Br. at p. 88.

DES/USESC claim that longer-term contracts have wholesale profit margins, yet fails to point to any record evidence that such margins increase in longer-term contracts.

DES/USESC also claim that "it is inevitable that each of these risks would be greater in a long-term contract than in a quarterly or monthly contract." DES/USESC does not point to the record to support this conclusion. In fact, it is not clear to the Ameren Companies that these risks would be greater for a 3-year contract or that the BGS Suppliers would be less able to manage those risks for a 3-year contract. The BGS Suppliers are in the best position to manage these risks. Such an unsupported, bold statement should be given no weight.

DES/USESC also claim that its proposal will advance the retail electricity market in Illinois. DES/USESC Init. Br. at p. 14. Staff completely disagreed. Staff Init. Br. at p. 91. Staff concluded that the Ameren Companies proposal places no restrictions on a current bundled customer's ability to switch to an ARES nor does it prevent such alternative suppliers from entering the market or hinder them from offering new services. *Id.*

DES/USESC claim that longer-term contracts could lead to active efforts by BGS Suppliers to work against retail competition and customer education programs. Such a concern is not warranted. The results of this proceeding must not be swayed by bald accusations that a BGS Supplier might be motivated to take a position in the future with respect to any regulatory or legal matter before the Commission.

DES/USESC's doomsday hypothetical is unfounded. DES/USESC Init. Br. at p. 12. It ignores several factors: (a) the rolling 3-year structure provides an automatic price adjustment mechanism (Resp. Ex. 3.0 at pp. 5-6); (b) the existence of the headroom (*i.e.,* potential profit margin) in the hypothetical should lead to increased competitive activity and "at the end of the day" ARES "just be competing fiercely trying to get customers" (Bohorquez, et. al. Tr. 432 at p. 12); (c) all customers, regardless of size have a real-time pricing option available to them (Resp. Ex. 5.0 at p. 7); and (d) the PWG's consensus in the ICC-sponsored Post-2006 process was that the chosen procurement process "should facilitate stable rates and mitigate volatility for applicable customers for relevant time periods." Resp. Ex. 11.0 (revised) at p. 31.

Based on its review of the record, Staff recommended that the Commission reject the DES/USESC proposal. The Ameren Companies also reject the DES/USESC proposal for the reasons described above. The Commission should reject the DES/USESC proposal.

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

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

As previously described, larger customers (those with loads exceeding 1 MW) will be served through BGS-LFP tranches and BGS-LRTP tranches. BGS-LFP tranches represent fixed price full-requirements service. BGS-LRTP tranches represent full-requirements service with real-time (hourly) priced energy.

DES/USESC recommends that customers with peak demands greater than or equal to 1MW be placed on an hourly energy product without a fixed-price option. DES/USESC Init. Br. at p. 2. Staff correctly states that price is an important consideration for all ratepayers, large and small. *See* IIEC. Ex. 1.0 at p. 6. Forcing these large customers to an hourly-priced product does not satisfy this important goal. The Ameren Companies chose to provide a fixed-priced option in recognition of the current level of development of retail competition in middle and southern Illinois. Resp. Ex. 3.0 at p. 9. The competitive options for some customer groups may be limited for these customer groups. Providing a one-year fixed-price option to these customers ensures that they will have an opportunity to receive stable rates.

IIEC, representing the very customers in question, supports the Ameren Companies proposal to offer both a fixed-priced product and an hourly-priced product to customers with loads greater than or equal to 1 MW. IIEC Init. Br. at pp. 29-31. IIEC concludes that the fixed-priced product will not harm the Ameren Companies, the consumers, or the development of the retail market. IIEC argues that, in fact, the fixed-price product will benefit customers by providing a ceiling under which retailers must operate and will discipline retail markets that do not have sufficient competitors to provide discipline through market forces. IIEC concludes that the Ameren Companies' proposal to offer 1 MW and over customers a one-year fixed-price product should be approved. The Ameren Companies concur with IIEC's recommendations.

The Commission should adopt the one-year fixed-price product option for the 1 MW and greater customers as proposed by the Ameren Companies and reject the DES/USESC proposal to eliminate this option.

2. Prequalification of BGS-LFP Load

IIEC proposes that customers with loads larger than 3 MW be required to prequalify their load for the auction, suggesting that this would reduce bidder's volume risks as they would have a better idea of the amount of load in each tranche. Staff does not oppose the concept of prequalifying large loads and believes that it may lead to a reduced risk premium.

The Ameren Companies support the efforts of the IIEC and other parties to reduce risks and costs. However, the benefits of such efforts should not exceed the costs to the customers. In this case, customers' supply alternatives should not be limited by administrative hurdles and burdens. Under IIEC's prequalification proposal, if a customer fails to register its load with the Ameren Companies, that customer will loose the opportunity to take fixed-price BGS products. Presumably this would force the customer to the hourly BGS product or an ARES service if available to this customer.

Such a program also places the additional burden of the administering the prequalification procedure on the Ameren Companies at a time when they should be focusing their efforts on the auction. The Ameren Companies also note that while the IIEC claims that these burdens will not be undue, they have not detailed the prequalification process or procedures that would be required.

For these reasons, the Commission should reject IIEC's proposal that customers with demands greater than 3 MW prequalify their load in order to receive the benefit of fixed price products.

3. Demand Charge Component for ≥ 1 MW customers

In the context of the Stipulation and Agreement reached between the Ameren Companies and IIEC, the Ameren Companies have agreed to propose by the third auction a cost-based demand charge in the fixed-price rate design for whatever rate or tariff applies to the 3+ MW customers. Ameren/IIEC Joint Ex. 1. Because of the stipulation, IIEC now agrees that the Commission need not adopt its recommendation for immediate implementation of a capacity charge in this case.

The Commission should accept these parties' stipulation and delay of the IIEC's capacity charge proposal until proposed by the Ameren Companies.

4. Other

IIEC initially recommended that a solicitation for a multi-year product be offered to BGS-LFP customers. In the context of a stipulation with the Ameren Companies, these parties have agreed that if the Commission adopts a formal review process for the auction, the Commission need not adopt IIEC's multi-year BGS-LFP product proposal. Ameren/IIEC Joint Ex. 1. The Commission should accept these parties stipulation and forego consideration of IIEC's multi-year BGS-LFP product proposal. *See* a discussion of the formal review process in Section V.k.4, *infra.*

IIEC also recommends that the Ameren Companies hold either a separate auction or RFP for customers with demands greater than 3 MW. This proposal should be rejected. Splitting the customers into many small groups based on special customer characteristics and administering a separate procurement process for these customers would be neither practical nor wise.[8] Resp. Ex. 11.0 (revised) at p. 22. Instead the Ameren Companies' product design focuses on providing consumers with a simple, viable default service option at the lowest cost. Resp. Ex. 18.0 at p. 16. The simple default service option permits the retail marketplace to develop the products

[8] The Ameren Companies note that the attempt to separate the 3+ MW customers is just one of the attempts to develop customized products for certain customer subsets. Another such proposal is moving the 400 kW to 1 MW customers to the BGS-LFP product. These exemplify the customized products that the Ameren Companies do not wish to provide.

demanded by consumers without the influence of arbitrary, artificial product designs. *Id.* IIEC has not shown the creation of another auction segment or administering a completely separate solicitation to be required.

J. Contingencies

The Ameren Companies contingency plans primarily rely on MISO-administered markets and replacement solicitations. Staff finds that relying on MISO markets is appropriate because the spot energy markets are administratively convenient and possibly the least costly. Staff Init. Br. at p. 94. The Staff also found that the process of using a replacement auction in certain scenarios was reasonable and appropriate. Staff, ultimately, had no objections to the contingency procurement methods proposed by the Ameren Companies. The Ameren Companies concur with Staff's conclusions. The Ameren Companies respectfully request approval of the contingency plans as proposed.

1. Volume Reduction

Staff did not object to the Ameren Companies' proposed contingency plan for a volume reduction scenario. However, Staff recommended that tranches removed from the auction as the result of a volume reduction be acquired under the rejected auction contingency plan if the auction was rejected.

The Ameren Companies agree with such a clarification. The Ameren Companies did not intend to separately acquire these products if one auction contained both a volume reduction and a Commission rejection. If such a circumstance were to occur, the Ameren Companies agree that all the tranches associated with the rejected auction should be acquired through the rejected auction contingency plan.

The record supports the adoption of this contingency plan.

2. Supplier Default

Staff has no objection to the Ameren Companies' proposed contingency plan for the Supplier Default situation.

The record supports the adoption of this contingency plan.

3. ICC Rejection

Although Staff did not object to the Ameren Companies'proposed contingency plan for the ICC Rejection situation, it notes that a new supply strategy would be needed promptly to ensure power supply in 2007. The Staff, therefore, expects the Ameren Companies to be prepared to promptly propose a supply plan in the event that the Commission rejects an auction's results. The Ameren Companies acknowledge the Staff's expectation and will do their best to satisfy that expectation.

The record supports the adoption of this contingency plan.

4. Subsequent Prudence Reviews of Actions in Response to Contingencies

The Ameren Companies are seeking a prudence determination in this proceeding regarding its proposed contingency plans. The Ameren Companies, however, are not seeking a prudence determination with respect to its future discretionary actions under these plans or its future discretional actions that lead to the occurrence of a contingency. Staff is in agreement with respect to the latter.

Staff identifies three general aspects of a prudence determination regarding the potential contingency purchases: (a) whether the proposed purchases will result in prudently incurred reasonable costs; (b) the reasons for the purchase; and (c) whether the Ameren Companies acted prudently with respect to the credit requirements.

To address these concerns, the Ameren Companies adopted language proposed by the Staff that expressly reserved the Commission's ability to conduct limited prudence review as described above. Resp. Ex. 18.0 at p. 32, *see also*¸ Ameren Init. Br. at p. 93. With this reservation of rights, the Staff expressly supports the Ameren Companies request for a prudence determination with respect to contingency purchase under the proposed contingency plans. ICC Staff Init. Br. at p. 102.

The record in this proceeding supports the Ameren Companies request in this proceeding for a prudence determination purchased under the contingency plans.

K. Regulatory Oversight and Review

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

The Commission will maintain oversight mechanisms. Resp. Ex. 2.0 at p. 24. As explained in the Ameren Companies' Initial Brief, Commission will:

> (1) approve the procurement methodology and process before the auction takes place; (2) closely monitor compliance with the approved procurement process with assistance of an independent Auction Advisor; (3) be able to initiate an investigation of the auction outcomes if the procurement was not conducted in compliance with the process; (4) approve the BGS rate structure and the rate allocation methodology used to translate the procurement costs into retail rates; (5) approve the market value adjustment factor; (6) approve the contingency plans that describe the process the Ameren Companies will use to purchase any BGS supply not obtained through the auction process; and (7) approve any proposed prospective changes to the procurement process. Id. The Commission also retains full regulatory oversight regarding DS rates and the DS component of bundled service rates. The Commission also will fully retain its ability to implement potential future energy policy options, such as renewable resource standards or energy efficiency and low-income programs.

Ameren Companies Init. Br. at pp. 93-94.

The Staff Initial Brief concludes that the traditional ratemaking decisions pursuant to the Public Utilities Act will be made in this proceeding. Staff Init. Br. at pp. 102-104. In this proceeding, the Commission will determine whether it is appropriate to approve the auction proposal based on the evidence and arguments submitted by the parties. Staff notes that some parties have raised concerns about the Ameren Companies' request for a current determination that the rider-based rates are just and reasonable. *Id.* Staff submits that it is appropriate to make that fact-based determination in this proceeding. The Ameren Companies' proposal is for an open and transparent process that specifies all material aspects of the power procurement. The Ameren Companies' management discretion is effectively removed. The Staff concluded that "when these facts are considered, it is clear that the record in this proceeding supports the Companies' request for a prudence review." *Id.*

The Attorney General argues that the Ameren Companies' proposal violates the Public Utilities Act because it does not allow the Commission to review actual rates. AG Init. Br. at pp. 50-53. CUB also argues that the auction proposal eliminates the Commission's obligation to perform an after-the-fact prudence review of the auction prices and to determine whether the resulting rates are just and reasonable. *See* Section III for a discussion of the Attorney General and CUB's arguments regarding the legality of the Ameren Companies auction proposal.

CUB correctly states that the auction product is not typically traded in the wholesale markets. While it may not be a typically traded product, similar full-requirements products are commonly used in the wholesale market. For instance, the Ameren Companies' contracts with Dynegy and AER also provide for the provision of full-requirements products. As described above and in the Ameren Companies' Initial Brief, the full-requirements product was designed to properly allocate risks between the Ameren Companies and the BGS Suppliers. Adopting full-requirements products does not necessitate an 'after-the-fact' prudence review.

CUB suggests that the Ameren Companies dislike the notion of after-the-fact prudence reviews and the risk of not being able to pass on all costs to consumers. The Ameren Companies have developed an auction structure that does not rely on any discretionary activities by the utilities. The auction structure is designed to result in prices that are representative of the market and includes competitive safeguards to protect the auction and the consumers. Considering the protections built into the auction process, an after-the-fact prudence review is not warranted, not justified, unnecessary, and undesired.

MSCG recommends that the Commission affirmatively conclude that "other state law, including but not limited to New York law, may govern the interpretation of an alternate guaranty approved under Appendix C of the Part I Application. Form." *Id.* The Ameren Companies concur with MSCG's request that other state law, including but not limited to New York law, be permitted to govern the interpretation of an alternate guaranty approved under Appendix C of the Part I Application Form, with the clarification that any such guaranty must be approved using the standards and processes set forth in such Attachment C.

2. Post-Auction Commission Review of Results

As set forth in the Ameren Companies' Initial Brief, the proposed Rider MV provides for prompt post-auction consideration of the auction results by the Commission. Resp. Ex. 2.0 at p. 25. If no action is taken by the Commission within three business days following notice of the end of the auction from the Auction Manager, the auction-determined procurement costs should be deemed prudent for the purpose of full cost recovery in retail rates. Id. at pp. 25-26. At that point, the Ameren Companies would proceed with the acquisition of supply from the pre-qualified successful bidders. Id.

MSCG recommends one modification to the Ameren Companies' proposal. MSCG recommends that the Rider MV be modified such that the Commission's ability to initiate an investigation of the auction would be expressly limited to those situations where "the conduct or competitiveness of the Auction or outside events are believed to have compromised the Auction process." MSCG Init. Br. at p. 3. CCG recommends that the Commission adopt a New Jersey Board of Public Utilities style post-auction review process. This process focused on the mechanical aspects of the auction and whether there was evidence of collusion, gaming or market anomalies that called the auction competitiveness into question. CCG Init. Br. at pp. 14, 17.

CUB objects to the three business day Commission turnaround because the Ameren Companies did not quantify their claims that auction prices might be driven up if the review is delayed. CUB suggests that the price risk to leaving the auction open is a product of the Ameren Companies' conjecture. Bidders, however, will not accept an open-ended process. See Resp. Ex. 2.0 at p. 26. The lack of a quantitative analysis does not eliminate the substantial risks that these parties have identified.

Regarding the proposals that the Ameren Companies adopt specific language in the Rider MV that limits the reasons upon which the Commission can reject an auction result, while the Commission can reject the auction for any reason that it believes justified, by the Commission should rely heavily on the reports provided to the Commission by Staff and the Auction Manager. Although the Ameren Companies agree that the Commission should limit its review to the conduct or competitiveness of the Auction or outside events are believed to have compromised the auction process, the Ameren Companies do not desire to expressly limit the Commission's authority on this matter.

As a technical matter, CUB objects to the Auction Manager having "only one business day" to file its report on the auction. While true, the obligation to file the report within one business day should not be read to suggest that the Auction Manager has only one day to review the auction (and activities leading up to the auction), prepare the report, and file the report with the Commission. Such activities likely could not be completed in just one business day. Instead, the Auction Manager will continuously prepare the auction reports throughout the pre-auction and auction processes. In fact, the Auction Manager has committed to provide a copy of a draft report on the pre-auction process to the Staff before the auction itself even begins. Resp. Ex. 11.0 at pp. 57-58.

CUB objects to the Commission's three-business day window for reviewing the auction results and the assumed inability of the Commission to review the final prices (rather than whether the auction rules were followed). CUB cites testimony that the Commission only can reject the auction if "unambiguous evidence that the auction process was not followed." CUB suggests that the Commission is being asked to accept on blind faith that the prices are fair because the auction rules were followed (and that an after-the-fact prudence review is not required to determine the justness and reasonableness of the resulting rates) because the Ameren Companies proposal does not expressly permit the Commission to review the auction results to the market price. Such claims are unfounded. The Ameren Companies do not ask the Commission to accept the auction on blind faith. First, the proposal does not limit the Commission's ability to reject the auction in certain circumstances. Although the Ameren Companies expect the Commission's review to be based on the Auction Manager's report and the Staff report, the Commission can decide to accept or reject the auction for any reason. Attempting to second-guess the marketplace would be unwise and unwarranted.

3. Post-Auction Workshop Process

See discussion of Formal Proceedings, Section V.K.4, *infra*.

4. Formal Proceeding(s) to Consider Process

The Ameren Companies have reached a stipulation with IIEC regarding formal review of the auction process. As part of that stipulation, the Ameren Companies and IIEC agreed to formal reviews after the first two auctions with biennial formal reviews thereafter. As detailed in the stipulation, the formal review process would include the opportunity for participants to file comments/testimony, responses to comments/testimony, hearings on comments/testimony, and briefs. IIEC and the Ameren Companies recommend that the Commission accept the terms of the stipulation.

5. Other Processes and Proceedings

DES/USESC seek to hijack this proceeding and turn it into an opportunity to create a customer choice initiative, requesting that the Commission direct the Staff to open a process in which the Staff will identify and eliminate barriers to a competitive retail electricity marketplace. DES/USESC Init. Br. at p. 23-24. DES/USESC also seeks to use this proceeding to launch a Commission investigation into advanced metering technologies.

The Ameren Companies share DES/USESC's interest in a vibrant retail electricity market in its service territories. However, one party's individual interests and endgames should not bog down this proceeding. This proceeding is focused on the Ameren Companies proposal for acquiring power for the post-2006 era and the tariff revisions necessary to ensure cost recovery. DES/USESC's efforts to launch Customer Choice and advanced metering initiatives simply do not belong in this proceeding. If DES and USESC feel strongly about these efforts, they can directly petition the Commission for their implementation.

The Attorney General suggests that this docket represents an effort to avoid traditional Commission review and accountability. The Attorney General also claims that the law does not permit such avoidance. Section III provides a thorough discussion on the legality of the proposed auction process.

L. Supplier Forward Contracts ("SFCs")

The Ameren Companies filed three standard SFCs in this proceeding.[9] The contracts are referred to as standard contracts because each BGS Supplier who wins load for a specific product will be required to sign virtually the same BGS Supplier contract.

Dynegy's Initial Brief expresses an understanding that the SFCs place most of the full-requirements service risks on the BGS Suppliers as they are in the best position to handle that risk (or at least in the same position). Dynegy Init. Br. at p. 8. Dynegy then proposes that the version of the SFC provided by it in Dynegy's prefiled direct testimony be adopted by the Commission. *See,* Dyn. Ex. 1.1. The Ameren Companies note that the SFCs have advanced dramatically since Dynegy's redline was proposed. Since that time, the Ameren Companies have adopted numerous changes requested by the parties and have worked closely with ComEd to bring the contracts as closely together as feasible. See, Resp. Exs. 11.1 and 18.1. Adopting Dynegy's redline would be a step back in time and quality.

1. Uniformity in General

Staff witness Dr. Salant suggested that the Ameren Companies' and ComEd's SFCs be made more consistent. Ameren Companies' witness Nelson recognized that there was an interest in greater uniformity between these SFCs. The Ameren Companies, therefore, worked closely with ComEd to achieve uniformity on virtually all aspects of the SFCs. Mr. Nelson testified that

[9] The latest version of the SFC were filed with the Ameren Companies surrebuttal. *See* Resp. Ex. 18.1 and 18.2.

the Commission may make findings concerning any remaining work, which can be satisfied in a compliance filing. Resp. Ex. 10.0 at p. 7.

The Ameren Companies are committed to working with BGS Suppliers on finalizing the SFCs. The Ameren Companies auction timeline includes a detailed process in which the Staff determines compliance as an initial matter, the SFCs then are published for comments, and, finally, the comments are reviewed/incorporated by a committee consisting of the Auction Manager, Staff, the Ameren Companies, and ComEd. The SFCs would not be modified unless the parties agreed that the suggestions improve or clarify the document without jeopardizing compliance with the Commission's order. Staff proposed a process that included a 60-day compliance filing for finalizing the SFCs and left it up to the Commission to fill in the other details of the process.

Dynegy seeks an opportunity to negotiate substantive modifications to the SFCs after the Commission issues its final order. Dynegy Init. Br. at p. 9. Additional workshops and negotiation sessions are not required. The Ameren Companies cannot make any SFC changes that would cause the SFC to be in noncompliance with the Commission's order. Any process that would lead to such changes would be an inefficient waste of time. The Ameren Companies, therefore, oppose Dynegy's proposal that potential suppliers be permitted to craft substantive provisions in the SFCs after the order.

Staff takes issue with the SFC compliance/improvement process recommended by the Ameren Companies, suggesting that the process could be interpreted to mean that the Ameren Companies, ComEd, Staff, or the Auction Manager could make changes that were not consistent with the Commission's order. To ensure clarity, it is not the intent of the Ameren Companies to permit non-compliant substantive changes – regardless of who recommended the changes.

Although the Ameren Companies are not opposed to the compliance filing and review process (and, in fact, suggested it), the Ameren Companies cannot support the Staff's ill-defined process. Other than specifying a 60-day compliance filing, Staff leaves it to the Commission to fill in the details. Staff Init. Br. at p. 67. The record does not show what details must be included. The Commission should adopt the fully developed compliance review/filing process proposed by the Ameren Companies.

2. Credit Requirements[10]

a. Unilateral Right to Reduce Credit Standards

Staff witness Phipps recommended approval of the Ameren Companies' credit requirements. Staff witness Phipps also recommends that the Ameren Companies ability to unilaterally reduce credit requirements due to unforeseen circumstances be subject to after-the-fact review by the Commission and that the SFCs permit the Ameren Companies to restore the credit requirements to their initial level as circumstances permit. In an attempt to respond to Ms. Phipps' concerns, the Ameren Companies eliminated the ability to unilaterally reduce its credit

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[10] The Ameren Companies' Initial Brief inadvertently stated, "If the Ameren Companies' credit rating is downgraded below investment-grade level, BGS Suppliers may <u>seek the return of cash held as security</u> and require accelerated payments under the applicable contracts." Ameren Init. Br. at p. 102 (emphasis added). The underlined portion of this statement incorrectly states that the BGS Supplier may seek return of cash held as security. The following section of the Initial Brief correctly states that in this circumstance, the cash collateral held related to the level of exposure "will be transferred to a qualified institution upon receipt of written request from the BGS Supplier." *Id.* To be clear, the Ameren Companies do <u>not</u> propose the return of cash collateral to BGS Suppliers in this circumstance.

requirements. The Ameren Companies believe that a Commission or Staff review would be acceptable in advance of implementing changes to the credit requirements.

In its Initial Brief, Staff objected to the Ameren Companies attempts to satisfy Ms. Phipps' concerns. Staff complained that the Ameren Companies' proposal for Commission or Staff review before reducing the credit requirements is not fully developed. Staff says that none of the following have been defined: process for review, the information provided to the Commission/Staff, the time allotted for review and the input sought from the Commission/Staff. Staff Init. Br. at p. 111. Staff suggests that it would be unwise to rely on a process with so many unknown variables. What is not apparent from the Staff's brief is that these very same elements have not been identified for Ms. Phipps after-the-fact review.

Rather than after-the-fact second-guessing, the Ameren Companies would prefer to work closely with the Commission/Staff before taking these credit actions. The precise details of the process can be worked out between the Ameren Companies and Staff either in a compliance filing in this proceeding or on an *ad hoc* basis when the situation arises. Staff's perceived need for a detailed process should not be an insurmountable hurdle to the Ameren Companies working with the Commission/Staff to resolve issues as they arise. The Ameren Companies similarly expect to work with Staff as the auction draws near. The record supports the elimination of the Ameren Companies' unilateral right to lower credit requirement and to modify SFC § 6.1 as proposed by the Ameren Companies.

b. Independent Credit Requirement

MWGen supports the Ameren Companies' proposal to not include an independent credit requirement in its proposed BGS SFCs. This position is uncontested. MWGen's position is that an Independent Credit Requirement ("ICR") would be too onerous for suppliers and could diminish auction participation without providing additional consumer protections. MWGen Init. Br. at p. 11. The Ameren Companies do not contest MWGen's comments.

c. Bilateral Credit

The Ameren Companies have taken a number of steps to ensure a proper, secure credit relationship exists between the BGS Suppliers and the Ameren Companies. The SFC credit provisions provide protections against credit risks of both parties.

The credit risks are not mutual. The credit provisions, should, therefore, not be mutual. They are designed to appropriately account for the risks experienced by both parties.

The Ameren Companies' SFCs are different from the typical power sale agreements between unregulated parties. Resp. Ex. 21.0 at pp. 5-6. The SFCs govern the sale of power to serve regulated public utilities' retail load. The Ameren Companies will remain subject to the Commission's continuing regulatory scrutiny. *Id.* at p. 6. Commission oversight likely will not eliminate BGS Suppliers credit exposure, such oversight serves to reduce the probability that the Ameren Companies would default on payments under the SFCs. *Id.*

The SFCs provide for credit protections for the BGS Suppliers. The amount of cash collateral held related to the level of exposure that a downgraded Ameren Company has to a BGS Supplier will be transferred to a qualified institution upon receipt of written request from the BGS Supplier. *Id.* at p. 8. The payments due from a downgraded Ameren Company would automatically be accelerated to twice per month. *Id.* at p. 9. These credit protections provide the credit assurances needed by BGS Suppliers.

The Ameren Companies note that no potential BGS Suppliers, other than Dynegy, objected the credit terms proposed by the Ameren Companies. In fact, Dynegy does not object to the identical credit provisions in the ComEd proceeding. The ComEd and the Ameren Companies' SFCs are as uniform as practicable, including virtually identical credit terms.

Dynegy should not object so strongly in this case while accepting the identical terms in the ComEd case.

These same credit provisions have been used in other states facing the same questions now before the Commission. For example, the states of New Jersey and Maryland do not require bilateral credit terms between parties to their default supply agreements. Auctions in other states without bilateral credit requirements have proven to be successful. Resp. Ex. 14.0 at p. 9.

The Ameren Companies' SFCs strike a reasonable balance of interests between protecting the utilities and ratepayers from default risk and adversely affecting participation by qualified bidders. Resp. Ex. 21.0 at p.4.

The Commission should reject Dynegy's calls for bilateral credit for all of the reasons identified above.

d. Other Credit Provisions

1.1 Multiplier

Dynegy also objects to the posting of collateral of an amount exceeding 110% of the Ameren Companies' energy price exposure. Dynegy claims that BGS Suppliers should be required to provide only 100 % of the mark-to-market amount. DYN Ex. 2.0 at p. 6. Such claims should be rejected. The base mark-to-market amount includes only a comparison of energy prices. The auction products, however, are full-requirements products including transmission, ancillary services, and capacity among other items. If the Ameren Companies covered only their exposure to the energy component of the full-requirements product, then they would be exposed with respect to the other components of the full-requirements product. Multiplying the mark-to-market amount by 1.1 allows the margin calculation to cover the financial exposure associated with energy supply, but also the exposure associated with additional products and services required by the contract, including capacity, capacity reserves, load shape, basis, odd lot, and illiquidity premium. Resp. Ex. 14.0 at p. 7. Dynegy does "disagree that the multiplier may account for additional items." DYN Ex. 4.0 at p. 9.

Dr. Salant also acknowledges the need for the 1.1 multiplier. ICC Staff Ex. 1 at pp. 102-103. He testified that the Ameren Companies adequately justified the 1.1 multiplier.

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

The Commission should approve the 1.1 multiplier to the Ameren Companies' mark-to-market calculation.

3. Proposed Clarifications and Modifications Accepted by Ameren

The Ameren Companies adopted many revisions suggested by Staff and intervening parties. The Ameren Companies' Initial Brief specifically identifies and discusses the most significant changes adopted by the Ameren Companies.

4. Proposed Clarifications and Modifications Not Accepted by Ameren

a. Force Majeure

The Ameren Companies adopted the *force majeure* language in the ComEd docket with clarifying language that excludes the unavailability of Energy in the Locational Marginal Price ("LMP") markets from the definition of *force majeure.* Staff recommends that the Commission adopt the Ameren Companies' proposed *force majeure* language. Staff Init. Br. at p. 115. The Ameren Companies concur with this recommendation.

The Commission should approve the proposed *force majeure* language.

b. Joint and Several Liability

As explained in their Initial Brief, the Ameren Companies cannot undertake to commit themselves to assuming joint and several liability to the BGS Suppliers because they are not authorized by the Commission to pay or guarantee each others' debt or obligations. Resp. Ex. 18.0 at p. 6. The Ameren Companies have not sought such authorization from the Commission. Id. Moreover, joint and several liability simply does not make sense in this situation. For instance, the BGS auctions permit each of the Ameren Companies to acquire generation supply for the post-2006 period. Resp. Ex. 11.0 (revised) at p. 13. Each of the Ameren Companies has its own unique load and its own unique generation needs. Id. The BGS Suppliers will be separately supplying each of the three Ameren Companies. Id. SFC § 15.13(ii) unambiguously states that the Ameren Companies are not jointly and severally liable.

Staff witness Dr. Salant initially called for the SFCs to be rewritten so that they either: (a) make each of the Ameren Companies jointly and severally liable for each other's obligations; or (b) the contracts include separate payment provisions, separate obligations, clarified default/termination provisions. Staff Init. Br. at pp. 116-119. Dynegy also called on the Ameren Companies to take on joint and several liability. Dynegy Init. Br. at pp. 17-19. In the alternative, Dynegy recommended that the auction and SFCs be split along company lines – create separate auction products for each of the Ameren Companies and procure them in separate auctions. *Id.* at p. 19.

In its brief, Staff did not dispute that it would be impermissible for the SFCs to contain provisions directly or indirectly amounting to a guarantee by the individual Ameren Companies of each other's obligations under the SFCs. Staff Init. Br. at p. 120. Recognizing that joint and several liability is not permitted in this instance, Staff's Initial Brief focused on Dr. Salant's second option that the SFCs be clarified. Staff's Initial Brief, however, incorrectly interpreted the revised SFC to permit termination of specific SFC obligations rather than the termination of the whole agreement. Staff also misinterprets the Early Termination clause to permit termination of the SFC with respect to the obligations one of the Ameren Companies (but not all of the Ameren Companies) upon the default of less that all of the Ameren Companies. Staff Init. Br. at p. 121. This in fact is not the intent of the Ameren Companies.

The Ameren Companies disagree with the Staff's interpretation of the SFC. The Early Termination of the SFC refers to the termination of the entire agreement - not to the termination with respect to just one of the Ameren Companies. This is clearly stated in section 4.1.b of the form SFCs "Termination of Right to Supply BGS-FP" which reads as follows:

> The BGS-FP Supplier agrees that, notwithstanding any provision of this Agreement to the contrary, termination of this Agreement for reason of an Event of Default by the BGS-FP Supplier shall terminate any right of the BGS-FP Supplier to provide BGS-FP Supply **to the Companies** pursuant to this Agreement and thereafter nullify any of the entitlements to which the BGS-FP Supplier became entitled as a result of being selected as a winning bidder in the Illinois Auction (including, without limitation, the right to register as a Market Participant for the Delivery Points). Provided, however, nothing in this subsection shall be construed to prevent the BGS-FP Supplier from receiving the benefits of this Agreement, to which it is entitled as of the Termination Date, including the right to receive a Termination Payment if one is due to the BGS-FP Supplier upon termination.

Resp. Ex. 18.1 § 4.1.b (emphasis added).

This intent also is embedded in SFC § 5.4.b "Net Out of Settlement Amount" which states:

> The Non-Defaulting Party shall calculate a "Termination Payment" by aggregating all Settlement Amounts due under this Agreement or any other agreement(s) between **the Companies** and the BGS-FP Supplier for the provision of BGS Supply into a single amount by: netting out (a) all Settlement Amounts that are due or will become due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available

> to the Non-Defaulting Party and actually received, liquidated and retained by the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement or any other agreement(s) between a Company and the BGS-FP Supplier for the provision of BGS Supply against (b) all Settlement Amounts that are due or will become due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting party under this Agreement or any other agreement(s) between a Company and the BGS-FP Supplier for the provision of BGS Supply, so that all such amounts shall be netted out to a single liquidated amount; provided, however, that if the BGS-FP Supplier is the Defaulting Party and the Termination Payment is due to the BGS-FP Supplier, the Companies shall be entitled to retain a commercially reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as security for additional amounts that may be determined to be due and owing by the BGS-FP Supplier as Damages and further provided that any previously attached security interest of a Company in such retained amounts shall continue.

Resp. Ex. 18.1 § 5.4.b (emphasis added).

The Ameren Companies' approach to Post-2006 procurement process is to acquire power to meet the needs of the combined footprint of the Ameren Companies as a single block of Energy and Capacity and governing that transaction with a single SFC that does not allow for termination in part for non-performance by one or two of the Ameren Companies. This approach allows customers to benefit from the efficiency of procuring the loads of the three Ameren Companies as one block of load. It also recognizes the importance, from a planning and pricing perspective, of treating the BGS supply obligation to each of the three Ameren Companies as a commitment with respect to a single block of Energy and Capacity. Under this approach, each of the three Ameren Companies will bear the risk that nonperformance by another of the Ameren Companies can ultimately result in the termination of the SFC. Therefore, while the Ameren Companies are not jointly and severally liable, each of the Ameren Companies bears the risk that the entire contract (and the supply which flows from it) can be terminated as the result of nonperformance by even one of the Ameren Companies. The Ameren Companies believe maintaining this concept best accommodates the needs of both the Ameren Companies and the BGS Suppliers.

c. Self-Supply of Ancillary Services

Staff witness Ogur's recommendations regarding a change to the contract to allow for suppliers to provide resources to the Ameren Companies which would allow for the Ameren Companies to self-supply certain ancillary services should be rejected.

Significant technical issues exist, most importantly the requirement that real-time metering must be in place to self-supply Schedule 3. Resp. Ex. 18.0 at p. 33. While Staff wants the Commission to believe that "Mr. Ogur's cross examination … revealed that there is no such requirement." Staff Init. Br. at p. 131. In fact, it does not. On cross examination, Mr. Ogur reads a part Section 5.4 of the MISO's Coordinated Reliability, Dispatch, & Control Business Practices Manual related to pseudo ties, and concludes that "if there are pre-existing agreements for metering and telemetry already addressed between attaining and major balancing authorities, pseudoties are not necessary. Therefore, real time metering is not necessary." Ogur Tr. p. 22. However, the Ameren Companies testified that the necessary metering is not in place and cannot be installed in sufficient time to be in place prior to the start of delivery. Resp. Ex. 11.0 at p. 46. Further, when asked if this section specifically allows for providing ancillary services on an estimated basis with later true up, he replied "(i)t doesn't exclude it." Ogur Tr. at p. 22. In an attempt to further bolster his claim, Mr. Ogur references another part of this manual and concludes that "it does allow for that, on a load forecast basis as opposed to a real time metering basis." *Id.* at p. 23. However, the very section quoted by Mr. Ogur refers to situations where the balancing authority – and not the supplier – is providing the ancillary services. Section 5.4 of the Coordinated Reliability, Dispatch, & Control Business Practices Manual of MISO does indeed clearly and explicitly states that hourly schedules, load forecasts as well as after-the-fact metering may be utilized – but only in the context of the balancing authority being the one providing the ancillary services.

Most importantly, however, it must be recognized that neither the MISO nor the applicable balancing authority is obligated to change their FERC regulated tariffs or business practices to accommodate such a recommendation, if approved by the Commission. Resp. Ex. 18.0 p. 37. Mr. Ogur, himself, acknowledges this. Ogur Tr. at p. 21. He further acknowledges that it would be improper to include provisions in the SFC which conflict with such tariffs and business practices. *Id.* at pp. 20 - 21.

If the Commission requires the Ameren Companies to give the BGS Suppliers the option to self-supply ancillary services, the SFCs should be revised to clearly indicate that the provision of such resources must comply with all applicable Transmission Service Provider tariff requirements and the requirements of the applicable Balancing Authority, and that such a contract provision does not infer or otherwise suggest that the BGS Supplier's proposed arrangements will be acceptable to Transmission Service Provider or the Balancing Authority. Also, the self-supply arrangements would need to be in place prior to the earlier of commencement of service or such time that the Ameren Companies as the Transmission Service Customer would be required to make an election of the method of procuring ancillary services to MISO. Finally, provisions related to the recovery of MISO charges and other incremental costs incurred by the Ameren Companies to accommodate such an option would need to be included in the SFC, to ensure that the BGS Supplier incurs to the greatest extent possible the full and complete cost of electing such an option. Resp. Ex. 18.0 at p. 37.

d. Identification of Resources

Staff witness Ogur's recommendations regarding a change to the contract to remove the requirement that suppliers identify their capacity resources should be rejected. Above all else, the Ameren Companies take their obligation to provide reliable service to their native network customers as paramount. Any proposal that jeopardizes their ability to do so is unacceptable. All other arguments are secondary. Resp. Ex. 18.0 at p. 37.

The claim that supplier's may find such data to be commercially sensitive is without foundation. No supplier has objected to these provisions. Resp. Ex. 11.0 (Revised) at p. 50, Resp. Ex. 18.0 at p. 39. Nor have AmerenIP's current suppliers who have a similar requirement objected to such provisions. Resp. Ex. 11.0 (Revised) at p. 50, Resp. Ex. 18.0 at p. 39. It is quite telling that Mr. Ogur makes this claim without even having asked a single supplier if they found the provision troubling. *Id.* at p. 50. Mr. Ogur attempted to use the testimony of Dr. LaCasse to bolster his claim. ICC Staff Ex. 19 at pp. 19-20. However, his selected quotations misrepresented Dr. LaCasse's testimony. Unlike the situation where BGS Suppliers are asked for such data before hand and with no idea of what such data would be used for (the situation Dr. LaCasse was addressing), the Ameren Companies are asking for such data <u>after</u> the auction, make quite clear what such will be used for and are well aware of the regulations, and contractual provisions which prohibit sharing such data with affiliates or others and presume that BGS Suppliers are as well. Resp. Ex. 18.0 at p. 38.

The Ameren Companies, and not the BGS supplier, are the transmission service customers. Data regarding their own service is available to them – a fact Mr. Ogur himself acknowledges. Thus, access to the data already exists. Mr. Ogur's recommendation is contingent upon not only the agreement of the Ameren Companies, but also that of MAIN (or an subsequent Regional Reliability Organization). However, Mr. Ogur is not even aware if MAIN would accept such a proposal, as he did not contact MAIN regarding this issue. Ogur Tr. at p. 26. He does acknowledge, however, that the provisions within the SFC cannot compel MISO, Mid-America Interconnected Network, Inc. ("MAIN"), or any other regional reliability organization ("RRO") to modify their tariffs, business practices, operating guides of procedures. *Id.* at p. 4-10.

The Commission should reject Mr. Ogur's proposal. As his recommendation likely would conflict with these the applicable rules and standards, if the Commission requires the Ameren Companies to adopt these recommendation, it should, therefore, condition such an obligation on the Ameren Companies' ability to comply without violating standards of or obligations to MISO, MAIN, or any other RRO and without violating any applicable law or regulation. Resp. Ex. 18 at p. 40.

e. New Taxes

Constellation noted that the Ameren Companies rejected its suggestion that SFCs include a mechanism where by new taxes imposed on the suppliers could be passed through to consumers if permitted by the Commission. CCG Init. Br. at pp. 18-19. CCG claims that providing this option to suppliers would reduce BGS Suppliers' risks. That a BGS supplier might become subject to a new tax is not an issue in this case. The issue is whether it is appropriate for these tax consequences to be shifted to retail consumers. The SFCs create a clear line of demarcation between the BGS Supplier's responsibilities and the Ameren Companies responsibilities. CCG seeks to shift these costs across that line. These tax obligations would be shifted from the BGS Supplier through the Ameren Companies to the retail consumers. Such a shifting is counter to the fundamental nature of the SFCs. By agreeing to the SFCs, the BGS Suppliers should accept the responsibilities growing from their side of the demarcation line.

f. Payment Disputes

MWGen notes that SFC § 9.3 allows either party to withhold from the other any disputed amount billed under the contract. MWGen then argues that SFC § 9.3 should be modified to permit a higher interest rate and expedited resolution. MWGen Init. Br. at pp. 11-12. MWGen suggests that the Ameren SFC § 9.3 be modified to make it more commercially fair. To support it's arguments, MWGen points to its Initial Brief in the ComEd proceeding (Docket 05-0159).

MWGen raises this issue for the first time in its brief. MWGen did not present any evidence on this subject in this proceeding. There is no record evidence regarding MWGen's concerns about § 9.3 or showing that that provision is not commercially fair. MWGen even points out that the Ameren SFC is not as potentially detrimental to suppliers as the ComEd SFC.

MWGen's recommendation should be rejected.

g. Prudent Utility Practice Standard

The BGS Suppliers should be paid only for the energy that actually was delivered to and consumed by the BGS customers.[11] Dynegy, however, recommends that the SFC be amended in a manner in which the BGS Supplier would be paid for the energy that would have been used if not for a disruption of electric service to end use customers due to an act of negligence on the part of the Ameren Companies. DYN Ex. 1.2 at p. 4. Dynegy proposes a "Prudent Utility Practice" standard for this risk allocation. *Id.*

This proposal might subject the Ameren Companies to a prudence review of every distribution system outage. The increased prudence reviews and disputes could significantly increase the Ameren Companies' cost. Id. at p. 7. These costs ultimately would be borne by the

[11] The Ameren Companies are "not be required to accept quantities of Energy, Capacity or any other component of BGS-FP Supply utilized by Customers on an instantaneous basis as a function of electrical load, in excess of such Customer's instantaneous consumption of such component of BGS-FP Supply." Resp. Ex. 18.0 at p. 7.

consumers. In this instance, having the BGS Supplier factor the risk of lost sales due to outages attributable to the Ameren Companies negligence into its bid price results in a more efficient process and, ultimately, the lowest cost to the end use consumer. Id.

Most outages are caused by reasons out of the Ameren Companies' control. Resp. Ex. 18.0 at pp. 149-151. Dynegy takes this concept a step too far by suggesting that that the Ameren Companies should not be concerned about prudence reviews because "[o]f course, for any given outage" it "will be readily apparent to everyone including Suppliers, …." that the cause of a outage was beyond the Ameren Companies' control. Dynegy Init. Br. at p. 22. Although the Ameren Companies wish things were so black and white, matters such as these inevitably are subject to debate and consternation. There are risks and costs associated with defending a prudence attack.

Dynegy's recommendation should be rejected, as it would subject the customers to additional costs.

h. Payments from Defaulting ARES

Dynegy proposes that payments received by the Ameren Companies from an ARES as damages, penalties, or forfeited security due to the failure of such ARES to provide adequate notice of customer switching or other default be passed through to the BGS Suppliers. The Ameren Companies agree with this concept provided that the Ameren Companies are provided an offset right to account for any costs or losses it incurs due to the default. The Ameren Companies SFC includes these pass-through and offset rights. Resp. Ex. 18.1. §2.1.c(vii). Dynegy objects to the Ameren Companies' right to recover its costs through the ARES payments simply because the costs have not been identified up front. Instead, Dynegy wants to keep all the money for itself.

Through Ameren Companies' witness Blessing, the Ameren Companies committed that any amounts retained under the offset right would be no greater than appropriate to offset their costs or losses attributable to the ARES' default. Resp. Ex. 18.0 at p. 8. If no such costs exist, then the Ameren Companies will not retain any portion of the ARES payment. The SFC language is not vague and discretionary. The retained amounts cannot be arbitrarily determined by the Ameren Companies. The SFC language provides an important cost recovery protection to the Ameren Companies. As such, Dynegy's proposal should be rejected.

i. Delivery Point Definition

The MISO's current business practices require the Delivery Point definition to recognize three BGS Supplier-specific load zones for each BGS Supplier (one in each of the three Ameren Company control areas). The Ameren Companies seek to define term "Delivery Point" in a manner that is consistent with the MISO energy markets. Id. at p. 9. The definition recognizes that MISO will require each BGS Supplier have separate load zones and that those load zones will be defined as encompassing the BGS Suppliers share of the BGS load of a given Ameren Company. The definition also recognizes and that each BGS Supplier will need separate load zones for each of the three Ameren Company control areas. Id. The basic principles that are embedded in this definition are appropriate and should remain in the Ameren Companies' SFCs. Id.

Dynegy in Initial Brief on the issue of the definition of delivery point attempts to lead the Commission to the conclusion that it is the Ameren Companies' testimony that MISO will only allow one Market Participant per load zone is incorrect if: (a) MISO permits Elemental Pricing Nodes to be allocated by percentage to more than one Commercial Pricing Node; and (b) Suppliers could serve their slice of the Ameren load and settle at a load zone LMP, then. However, the testimony to which Dynegy cites in brief does not support this contention. There is no evidence in the record that rebuts the fact that the MISO only permits one Market Participant to be designated per load zone. Resp. Ex. 18.0 at p. 9. Mr. Blessing's testimony on cross is clearly not evidence that this is other than fact. Mr. Blessing's acknowledgement that MISO permits Elemental Pricing Nodes to be allocated by percentage to more than one Commercial Pricing Node is consistent with the Ameren Companies consistent position that a separate load zone/Commercial Pricing Node, will be created for each of the Suppliers and that each such load zone will be equivalent. Similarly, serving their slice of the Ameren load and settling at a load zone LMP is consistent with the concept of having multiple, effectively equivalent load zones / CP Nodes, each unique to a given supplier. Id. –at p. 10.

Even if multiple market participants are able to schedule and settle with MISO against a particular load zone/CP Node, Dynegy has failed to identify how the other supplier obligations could be met without having a unique (albeit equivalent to the others) load zone for each BGS Supplier. The obligations and responsibilities include responsibility for the bidding of their load share at the appropriate load zone, input of any financial schedules or physical bilateral schedules from resources to the appropriate load zone, meeting resource adequacy requirements, nomination and management of Fixed Transmission Rights ("FTRs") related to their load share and the direct settlement of all costs other than the network service related to the load with MISO. The BGS Suppliers will also be responsible for their own credit relationship with the MISO. Resp. Ex 9.0 at pp. 15-16. The Ameren Company intend for the BGS Suppliers to be responsible for more than just the provision of energy. The BGS Suppliers' ability to directly nominate and hold FTRs in particular is expected to lower the overall cost of supply. Dynegy cannot simply wish away a MISO requirement. As noted elsewhere, MISO is not obligated to modify its tariff or business practices to accommodate a non-conforming provision in the SFC.

Resp. Ex. 18.0, at p. 33. , Ogur Tr. p. 21. As it has also been noted elsewhere, it would be improper to include provisions in the SFC which conflict with such tariffs and business practices. *Id.* at. pp. 20-21. Such changes can be made and incorporated prior to the issuance of the Auction documents. Although a more precise definition of delivery point is not required, the SFC finalization process identified above is the proper time and place to resolve Dynegy's concerns.

j. Changes to MISO Rules

The Ameren Companies readily acknowledge that changes to MISO's markets and market rules likely will occur as the market matures. Resp. Ex. 11.0 (revised) at p. 9. This is one of the many risks that the SFCs must allocate between the BGS Suppliers and the Ameren Companies. The question asked by Dynegy is where the risks of MISO changes should fall as between the Ameren Companies, the retail consumers, or the BGS Suppliers.

Dynegy states that the Ameren Companies did not justify the use of the delivery point as the point in which these risks shift from the BGS Suppliers to the Ameren Companies. Such a justification is so obvious as to go unstated, the BGS Suppliers have a duty to deliver their product to the delivery point. At that point, the BGS Suppliers delivery duties end. It seems obvious that the affect of MISO market changes should be allocated among the parties based upon their respective delivery obligations. It does not seem fair (and has not been justified) for the Ameren Companies or the retail consumers to share the risk that, for example, MISO might alter the energy market rules or membership rules in a way that increases the BGS Suppliers costs.

In an unlikely linking, Dynegy suggests that requiring the Ameren Companies to provide daily load forecasts could somehow reduce the BGS Supplier's risks of a change in MISO's rules or markets. Although requiring the Ameren Companies to produce a forecast that the BGS

Suppliers should produce independently would reduce the BGS Supplier's costs (assuming the BGS Supplier choose to not produce its own forecast as well), the link between a daily forecast and changes to MISO markets and rules stretches the imagination.

That said, Dynegy's proposal is based on false assumptions and premises. First, Dynegy incorrectly assumes that the Ameren Companies "currently and for years prior have (1) prepared and used similar forecasts; and (2) assembled the tools and collected the data ... needed to provide accurate forecasts ...." DYN Ex. 1.2 at p. 13. To the contrary, the Ameren Companies do not prepare and have never prepared such forecasts (i.e., forecasts differentiated by customer class, and incorporating customer switching data). Resp. Ex. 18.0 at p. 11. Dynegy would have the Commission believe that the load research programs which may be in place at the Ameren Companies would somehow enable them to prepare such forecasts, yet there is nothing in the record to suggest that this is true. Load research does not equal a detailed, day-ahead load forecast by customer class (even if it is only two classes.) Yet Dynegy would now have this Commission believe that such a forecast was the intended fruits of the customer's dollars.

Whether the Ameren Companies have load research programs and the amounts being recovered in rates is not relevant. What is relevant is that the Ameren Companies do not and have not produced the forecasts requested by Dynegy. The evidence in the record is that the current models do not utilize any customer class specific data, nor do they specifically incorporate customer switching. To prepare the load forecasts that Mr. Huddleston is proposing would require significant changes to existing models. Resp. Ex. 18.0 at p. 11. The load research programs are used to produce other important utility related analysis whose value is not questioned by Dynegy.

BGS Suppliers, like Dynegy, will have the historic data and certain forecast data available to it to produce its own daily forecasts. The BGS Supplier ultimately bears the risks associated with inaccurate load forecasting. *Id* at p. 12.

The Ameren Companies acknowledge Dynegy's willingness to discuss the potential liability for inaccurate forecasts. With all due respect to Dynegy, a willingness to discuss this important concern simply is not sufficient. If the Commission requires the Ameren Companies to provide some forecasting services to the BGS Suppliers, the contract language must be clear and unambiguous that the that such the forecast data is non-binding, that its accuracy is not warranted or guaranteed in any fashion and that the Ameren Companies will <u>not</u> liable for any consequences arising from the use of such data by a BGS Supplier. *Id.* Without these protections, the Ameren Companies will be put at risk of significant liability should a forecast not accurately predict the BGS Suppliers actual load with great specificity.

M. Other Auction Design Issues

None.

1. Bid decrements

2. Auction volume reductions

3. Portfolio rebalancing

4. Association and confidential information rules

5. Tranche size

6. "Price taker" proposal

7. Other format concepts and issues

N. Clearing Price: Uniform vs. Pay-as-Bid

O. Auction Management

1. Auction manager

2. Role of Ameren

3. Role of Staff

4. **Representation of consumer interests / separate consumer observer**

P. Date of Initial Auction

Q. Common vs. Parallel Auction

1. **Among fixed price products and hourly products**
2. **Between fixed price and hourly products**
3. **Between Ameren and ComEd products**
4. **Common deliverability test**

R. Blended, Fixed Price Auction Products

1. **Proposed blends for residential and small commercial customer supply**
   a. 3-year agreements
   b. Percentage of supply acquired at subsequent auctions
2. **Proposed 1-year fixed price product for 400kW-1MW customers**
3. **Proposed Monthly and Quarterly products**

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

1. **Nature of auction product and tariffed services for 1 MW and over customers**
2. **Prequalification of BGS-LFP load**
3. **Demand charge component for ≥ 1MW customers**
4. **Other**

T. Contingencies

1. **Volume reduction**
2. **Supplier default**
3. **ICC rejection**
4. **Subsequent prudence reviews of actions in response to contingencies**

U. Regulatory oversight and review

1. **Nature of Commission review before, during, and after Auction**
2. **Post-auction Commission review of results**
3. **Post-auction workshop process**
4. **Formal proceeding(s) to consider process**

5. **Other processes and proceedings**

V. Supplier forward contracts

1. **Uniformity in general**
2. **Credit requirements**
3. **Proposed clarifications and modifications accepted by Ameren**
4. **Proposed clarifications and modifications not accepted by Ameren**

W. Other Auction Design Issues

VI. Procurement Processes Alternatives

The AG complains about marginal cost pricing, or the lack of it, in the wholesale market. The AG's view is that each company should price at or near its own marginal cost of production. Why would a company do that? If Toyota can make a vehicle for $5000 less than a comparable Ford costs to make, we would not expect Toyota to sell its vehicle for $5000 less than the Ford. It is not an economic sin to price your product near the marginal cost of your competitor. That is the result we expect from competition.

There is no competitive mechanism of which we are aware to force market prices below the marginal cost of the last unit purchased. Certainly, the AG has offered none. The AG has offered three alternatives: 1) active portfolio management, which just means buying things in pieces, and doesn't address the margin earned by each seller; 2) talking all sellers into lower prices in "multi-lateral negotiations," which was Dr. Reny's "sort of" proposal; and 3) talking our affiliates into lower prices with our bargaining power. There's a lot of talking in these proposals, but not one offers any means of forcing prices below what sellers perceive is the market-clearing price.

For its part, CUB limits itself to active portfolio management, which, as noted, we addressed in our initial brief.

A. Active Portfolio Management

The AG and CUB continue to argue that it is premature to rely on the wholesale market for power procurement at this time. Instead, the AG and CUB argue that the Ameren Companies should engage in "active portfolio management" in which they buy power from the wholesale market. The distinction, frankly, is lost on us. Regardless, the Ameren Companies have to go to the wholesale market. They own no material amount of generation, whereas the wholesale market has lots of it. There is no other option.

The Ameren Companies fully addressed active portfolio management in their opening brief, and neither CUB nor the AG has added anything new. There is simply no reason to expect that the Ameren Companies could consistently beat the market, and any procurement plan that does is doomed to failure.

B. Request for Proposal

C. Affiliate Contract

The AG also argues, for the first time, that the Ameren Companies should use their "substantial buying power to negotiate with [their] generation affiliate . . . to purchase low-cost electricity . . . ."[12] No witness for any party made this argument previously, and it appears to have been invented for the purpose of answering the question that the AG could not answer throughout the case: how can the Ameren Companies force their affiliate to sell to them at prices lower than offered by the rest of the market?

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[12] The AG references one affiliate, Ameren Energy Generation. A second affiliate, [name], also owns and operates generation. We assume that the AG also intended to reference the second affiliate, and that the oversight occurred because the AG simply copied the recommendation it made for ComEd. We note in this regard that the [Cont'd] AG's Table of Contents refers to "low-cost nuclear power" which neither Ameren generation company produces. ComEd's generating affiliate does own and operate nuclear plants.

It is not surprising that no AG witness floated the "substantial buying power" theory during the evidentiary phase of the proceeding. It directly contradicts the AG's position (which the AG has not abandoned, *see* pp. 35-39 of its Initial Brief) that the wholesale market in which the Ameren Companies find themselves is highly concentrated. Thus, the AG's witnesses (and CUB's witnesses as well) argued that due to high market concentration, the Ameren Companies were at the mercy of sellers who could, as the AG's brief argues, extract monopoly rents from the utilities. Apparently, this wholesale market is an unusual one, because both sellers and buyers have extraordinary power – sellers can make buyers pay too much for power, but if buyers just take the time and make the effort to throw their weight around, they can pay less than the rest of the market is demanding.

It is therefore obvious why Dr. Rose, for example, could not endorse a vision of a market dominated by both sellers and buyers. It is not clear, however, why the Commission should endorse this market view. The AG's proposal still does not answer the fundamental question of why the Ameren Companies' affiliates would choose to sell to them at prices below what other buyers would offer them. The Ameren Companies have no control over their affiliates' sales decisions, and neither does this Commission.

The AG offers a theory, but it is a poor and incomplete one. The AG contends that all that matters to the Ameren Companies' affiliates is "production cost." In other words, as long as a seller can obtain a price that reflects "the marginal cost of generation plus a reasonable return" (and here we suppose the AG means a return that reasonable to the AG) then the seller will be happy and will make the deal.

No economist would agree with the AG, and that includes the economist who was paid by the AG to testify in this case. It is not surprising that the AG's argument does not benefit from any citation to the record.

The AG's argument utterly disregards the fundamental economic principle of "opportunity cost," a principle that was the subject of much discussion in this case. The opportunity cost principle holds that where a seller sells for a price below its best option, the difference between the best option and the actual sale – the lost opportunity – is a cost that economic players recognize. What the AG's new theory does not explain is why any market player would willingly accept the opportunity cost of selling below what the market is offering.

Let's take an example. If a generator's production costs are $25/MWh, the AG would hold that the generator would be happy (i.e., could be expected to make a deal) at, say $33/MWh. But if the market price is $40, and the generator sells at $33, it will experience an opportunity cost of $7/MWh. The AG still has no theory why any market participant would be expected to willingly absorb that opportunity cost. Pointing at production cost merely establishes a minimum price at which a transaction could occur – no generator will sell below marginal production cost. But that production cost doesn't establish the price at which the transaction will occur.

Hence, there is nothing in the record, nor would we expect there to be, that suggests that the Ameren Companies can squeeze any supplier to sell to them at prices below market (which is what we presume "low-cost electricity" to mean). However, this does not mean that the Ameren Companies are not trying to use bargaining power they have as buyers to get the best price. That is the point of the auction – if suppliers want our business, they must come in and give us their best price, or they will lose our business to their competitors. Thus, the auction requires sellers to compete, and rewards the most efficient with our business. it is not, contrary to the AG's contention, a "one-sided market."

D. Other Competitive Procurement Mechanisms

E. Other Procurement Processes Alternatives

VII. Tariff and Rate Design Issues

A. General Tariff and Rate Design Issues

In this portion of its brief, Staff states generally that the Commission should approve its rate mitigation plan, as well as its definitions of peak and off-peak periods. The Ameren Companies have responded to the Staff rate mitigation plan in the initial brief and in this brief at Section VII.C.I. See also Ameren Br., pp. 137-139. Also, in the initial brief the Ameren Companies indicated agreement with the definition of peak and off-peak periods. Ameren Br., p.125.

Staff also recommends rejection of the CES proposal regarding the migration risk factor. The Ameren Companies respond by referencing their arguments in both the initial brief (Ameren Br., pp. 130-131) and reply brief at Section VII.B.6 (a).

B. Matters Concerning Rider MV

1. Rider MV – Organization

The Staff correctly reflects the Ameren Companies' agreement to comply with the uniform index for Rider MV, and the Staff has also properly characterized the Ameren Companies' understanding that from time to time, there may need to be a change in the index. ICC Staff Br., pp. 160-161.

2. Rider MV – Definitions

a. Customer Supply Group Definitions

i. **Description of Power Supply Offerings**

ii. **Response to BGS Classification**

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

Staff explains its opposition to the peak and off-peak periods from 6:00 am-10:00 pm, Monday-Friday, as originally proposed by the Ameren Companies. ICC Staff Br., pp. 161-164. Later Staff does acknowledge the Ameren Companies' willingness to accept the on-peak period being recommended by Staff witness Peter Lazare. ICC Staff Br., p. 163. Mr. Wilbon Cooper, for the Ameren Companies, testified the primary reason for the proposed on-peak period was to promote consistency between the BGS on peak pricing period and those of the prevailing power markets, and also the on-peak pricing period of MISO. He concluded this particular on-peak period would promote cost causation and equitable cost recovery principles. Resp. Ex. 15.0, p. 13. Nonetheless, as stated, the Ameren Companies are willing to support Mr. Lazare's proposed on-peak period.

3. Rider MV – Specification of Competitive Procurement Process

4. Rider MV – Retail Customer Switching Rules

a. **Enrollment window**

i. **Duration of window**

In the initial brief, the Ameren Companies explained why it was inappropriate to expand the enrollment period as recommended by CES, from 30 days to 75 days. Principally the reasons are twofold:

- The increased enrollment period will increase the risk premium or cost associated with the BGS-LFP product

- There has been no demonstrable showing that there is a need to expand the enrollment period beyond 30 days for the benefit of customers

Ameren Br., pp. 126-129

A number of parties offered their opinions or arguments with respect to the enrollment window. Responses to their briefs follow.

Response to IIEC and CCG

The IIEC strongly opposes the extension of the enrollment window. IIEC Br., pp. 39-42. Among other reasoned arguments, IIEC correctly refers to the arguments of both the Ameren Companies and the Staff, which substantiated the increased cost associated with extending the enrollment window. Particularly noteworthy is the recognition that the very customers who are eligible for the BGS-LFP product are advising the Commission (1) that the product will unnecessarily be more costly and (2) they do not need any more time by which to make the decision as to whether they will take the BGS-LFP product or something being offered by an ARES.

CCG, a potential supplier in the auction and perhaps a potential supplier for the BGS-LFP product, states unequivocally that the generation supply rates for BGS-LFP customers will be higher as suppliers will likely price an auction premium into their bids to account for this optionality. CCG Br., p. 19.

Response to Staff

Surprisingly, the Staff moves away from its position in testimony and now suggests that an enrollment window of 40 or 45 days is acceptable. ICC Staff Br., p. 168. It is clear Staff is more interested in looking for a compromise than coming to the correct decision: "…an enrollment window between 30 and 75 days would more appropriately balance the competing interests at stake than the end point positions advocated by the witnesses." (emphasis supplied)

ICC Staff Br., p. 168. Ironically it is Staff's own evidence that counters its efforts to seek a compromise where one is not needed.

In his direct testimony, Dr. Eric Schlaf testified as follows: "In the absence of empirical information showing the potential effect on supplier bids of increasing the 30-day period to some longer period, I recommend that the Commission permit Ameren to impose a 30-day enrollment requirement for the initial auction." ICC Staff Ex. 5.0, p. 6. No other party submitted any "empirical" data or analysis with regard to this issue as was requested by Dr. Schlaf. Diligently, though, Dr. Schlaf produced his own empirical data or analysis in his rebuttal testimony.

In his rebuttal testimony, Dr. Schlaf explains how he was able to affirm that there would be an extra cost associated with enlarging the duration of the enrollment period. ICC Staff Ex. 13.0, pp. 4-5. And aside from Dr. Schlaf's empirical analysis, it is intuitively obvious, and no party disagrees, that there will be an additional cost associated with the BGS-LFP product with an extended enrollment window.

CES made its arguments for an extended enrollment period in its direct case, and Dr. Schlaf was fully aware of the reasons put forth by CES for extending the enrollment period from 30 to 75 days. Dr. Schlaf admitted at the time he filed his rebuttal testimony, that he was not opposed to the 30 day enrollment period. Tr.1392. He also admitted at the time he filed his rebuttal testimony when he put forth his empirical analysis, that he had a chance to review the direct case filed by the CES, and agreed there was nothing in their direct testimonies that caused him to change his opinion as to whether or not the 30 day enrollment window was appropriate. Tr.1393. Meaning, but for the sheer sake of coming to a "compromise," even Staff did not find persuasive CES' arguments, that customers need more than 30 days by which to make their supply choices.

In his direct testimony, Dr. Schlaf recommended that the matter as to how much time customers needed should be studied and the information relevant to that study be presented in the next auction. ICC Staff Ex.5.0, p. 6. The Staff also acknowledged this position in its initial brief. ICC Staff Br., p. 168. Ameren Companies also agree that the propriety of an enrollment window other than 30 days is something that should be further evaluated and if circumstances warrant, then additional adjustments can then be made. It could be that the 30 day window is too expansive and costly, and that a shorter window is preferred. But, today the weight of the evidence on record strongly advocates against changing the 30 day window period to anything longer, even by an additional 10 to 15 days.

Response to CES

The first argument put forth by CES is that the ComEd 75 day PPO enrollment window is working and, therefore, that period of time should be applicable to the Ameren Companies BGS-LFP product offering. CES Br., p. 41. In response, the IIEC more than adequately explained away the inappropriateness of the ComEd 75 day PPO enrollment window as being appropriate for BGS-LFP product. Notably, IIEC argues:

- PPO prices are administratively determined, based on a limited snap shot view of the wholesale market condition. The BGS-LFP product will be priced based on the wholesale market, meaning there is no price comparability as CES implies.
- The length of the PPO sign up window has no effect on PPO prices. Again, this bears upon the lack of comparability.

IIEC Br., p. 41.

In addition, there is nothing magical about a 75 day PPO window. AmerenIP's PPO, for example, has an enrollment window of 30 days. (emphasis supplied) Tr.285.

CES makes the claim that customers need more than 30 days to make fully informed decisions. CES Br., p. 42. Of course, rather than hear from retail suppliers who would stand to benefit from an extended enrollment period, we have the opposite position by the very customers who CES claims to be protecting, and who are adamant that 30 days is more than sufficient. CES points to the limited number of industrial customers who are making their positions known with regard to the 30 day enrollment window as somehow being meaningless. CES Br., p. 44. Yet, there are fewer suppliers that make up the CES group than there are number of customers that make up the IIEC.

CES offers that the Ameren Companies have presented no empirical analysis or customer survey. CES Br., p. 43. First, Staff provided the very empirical analysis that proves an extended enrollment period means additional cost to the BGS-LFP product. Second, as we previously stated, IIEC customers who have been very active in the retail market have made clear their choice. Third, one has to take into account the interests of CES in advancing its own cause by having an extended enrollment period, in weighing the propriety of their position; they do not hold their price but expect the BGS-LFP product to remain the same for not just 30 days, but 75 days. Fourth, their own witness admits the extended enrollment window means the price will change. Tr.205.

CES also argues that it is unrealistic to expect customers to pre-negotiate contracts. CES Br., pp. 44-45. When CES argues that neither customers nor RESs would have information necessary to pre-negotiate contracts before the auction occurs, one has to question the legitimacy of such a conclusion. CES Br., p. 45. No basis in fact is offered for this contention, only a self serving conclusion. Certainly the RESs such as CES intend to have customers enter into written contracts, and these contracts have certain terms and conditions that are unrelated to price. It stands to reason that these terms and conditions can be reviewed and negotiated before the price is known.

Finally, to be disregarded completely, are CES' references to evidence or positions taken in the ComEd Docket 05-0149. See CES Br., p. 39.

Response to IIEC

IIEC asserts if the Commission does extend the enrollment period, that it should still maintain a 30 day window for customers 3 MW above. IIEC Br., p. 42. IIEC does not explain why smaller customers should bear the additional cost at the expense of IIEC.

One thing is for sure – if the Commission does extend the enrollment period, it should do so for all customers eligible for the product. Otherwise we now have the administrative burden and cost of having to manage two separate enrollment periods, not to mention the affected price for the same product. There is also likely to be great confusion amongst customers. Of all the choices before the Commission, this is surely the poorest.

ii. **Opt in vs. opt out**

b. **Other switching rule issues**

Ameren Companies agree with the Staff's commentary on page 169.

Response to Direct Energy Srevices, LLC and U.S. Energy Savings Corp.

Out on the proverbial limb, DES/USESC argues for no restrictions on minimum stays or enrollment windows. DES/USESC Br., p. 25. This recommendation comes from firms that are not even certified as ARES (Tr. 540), and have no experience in the Illinois retail market. But more importantly, their positions assume a regulatory paradigm that simply does not exist in Illinois. See Resp.Ex. 11.0, pp. 31-36.

5. Rider MV – Limitations and Contingencies

The Staff appropriately explains the reasoning behind its recommended insertion to Rider MV. Specifically, in the event there is a contingency supply purchase, the Ameren Companies agreed to submit a report to the Staff and acknowledge the possibility that the Commission could open an investigation to determine whether an act or omission on their part caused the need for the contingency supply purchase. The Ameren Companies agreed to the proposed language change to Rider MV being recommended by the Staff with a modification that was, in turn, accepted by the Staff. ICC Staff Br., pp. 170-171.

6. Rider MV – Translation to Retail Charges

a. Customer Supply Group Migration Risk Factor

The CES regurgitates its claims that a migration risk premium should be taken into account in the rate prism in order to allocate a premium to recognize claimed distinctions among customer classes. CES Br., p. 49. CES then challenges the Ameren Companies' arguments and reasons for not allocating the migration risk premium through the rate prism and asserts that they are not convincing. CES Br., pp. 49-51.

The Ameren Companies have justifiably explained why the migration risk premium is not appropriate, at least at this time. Ameren Br., pp. 130-131. As additional support, the Ameren Companies point to the Staff brief which explains further why the CES proposal is flawed in both theory and practice. ICC Staff Br., pp. 172-174.

There are a number of statements made in the CES brief though which require some response.

CES argues it presented unrebutted evidence that failure to properly allocate the migration risk premium would improperly shift cost, and that Ameren witness Blessing agreed to this conclusion. CES Br., p. 49. This is not Mr. Blessing's testimony. The question asked of him was "to the extent that switching risk premium exists…," would that be factored into the supplier's bid and he responded in the affirmative. Tr.493. Mr. Blessing's agreement was premised on the condition posed in the question. Second, nothing about the question asked, and the answer that was given, relates to the improper shifting of costs; rather Mr. Blessing's testimony is that suppliers may consider switching, and to the extent they do, some risk premium may be assessed.

Second, CES in support of a portion of its argument refers to evidence it offered in the ComEd docket. Specifically, in footnote 27 on page 49 CES refers to their witnesses' testimony filed in ICC Docket 05-0159. The Commission should disregard this evidence as it is not in the Ameren Companies' record.

Third, the CES claim that suppliers may look to other retail markets in order to assess the respective migration potential, is pure speculation. No evidence from any suppliers is noted; moreover, there has been no credible showing to suggest or even imply that the switching data in the ComEd service territory is applicable to the Ameren Companies' service territories. See Tr. 280-281; ICC Staff Br., pp. 173-174.

In summary, the better course of action is to await the outcome of the first auction, and then assess whether a risk premium of the sort being proposed by CES is warranted.

b. **Market cost information – Market Energy Costs**

In its brief Staff recommends that the Commission use forward energy prices in developing the market energy costs that serve as the foundation for the translation prism. ICC Staff Br., p. 174. This had been Ameren Companies' original position, and we continue to advocate the use of forward energy prices for the reasons expressed in testimony and as explained in the initial brief. Resp. Ex.5.0, p. 21; Ameren Br., pp. 131-132.

7. Rider MV – Supply Procurement Adjustment

In its testimonies and in its initial brief, the Ameren Companies explained the nature of the cost or expenses to be recovered through the SPA. The Ameren Companies also explained their intent that SPA costs be tracked through the MVAF, and the supporting rationale. Resp. Exs. 23.0, p. 4; 16.0, p. 4; Ameren Br., pp. 132-133.

The Staff disagrees with the tracking of the SPA costs through the MVAF. CES agrees with tracking the SPA costs through the MVAF, but claims they have not been sufficiently explained. We respond below.

Response to Staff

The essence of the Staff argument can be found in its response to the CES: "As explained above, the problem with CES' proposal is that it would isolate a single cost element and force recovery for that cost element to an unchanging, predetermined amount regardless of the level of service provided or amount of cost actually incurred." ICC Staff Br., p. 179. The error in the Staff position lies with its understanding or belief with regard to the "level of service provided or amount of cost actually incurred." The level of service to be provided remains the same as will the cost as determined by the Commission in the Ameren Companies' next delivery service cases.

By way of explanation, assume that the Commission affirms a test year level of SPA costs at $1 million. Assume further that the number of units, or kilowatt hours, over which the SPA costs will be spread, is 100 million. In this instance the charge will be equal to one cent per kilowatt hour. Now, there will be customer switching and there will be a change in customer consumption levels, that is, the 100 million units or kilowatt hours forecasted for the annual period will not be realized. Assume further that the change in the consumption level is now 90 million units, or kilowatt hours, resulting in a shortfall of $100,000. In this instance, the Ameren Companies proposal is that the MVAF be adjusted to recover the SPA shortfall. Because of the uncertainty of customer switching to and away from utility BGS and changing consumption levels, allowing the SPA costs to be tracked through the MVAF protects both the customer and

Ameren Company from over or under recovery. Looking at Staff's view, if the consumption level increased above the 100 million level, then the Ameren Companies would collect more than the $ 1 million.

The next question is, why is it important for the same level of costs for the same services to be recovered irrespective of the change in kilowatt hours? This is due to the Ameren Companies' intent that the BGS costs paid by customers, mirrors what they would pay if they were buying the same product and the same services in the market. To illustrate, the CES will have individuals whose responsibility is to procure supplies for their customers. They will have someone in the same capacity, say, as Mr. Blessing who will be responsible for procuring power in the auction for the Ameren Companies. That person's wages and benefits remain the same irrespective of the number of customers being served, or more importantly, the number of kilowatt hours they are selling. Therefore, in order to achieve equal footing, the Ameren Companies are proposing a method by which the SPA costs are tracked through the MVAF in order to ensure a comparable market price for the product and service that is being offered.

Response to CES

The CES brief correctly explains why the nature of SPA costs should be tracked through the MVAF: "an improper allocation of costs will distort the true generation supply costs, distort the market, create false price signals, and act to frustrate customer choice in competition. CES Br., p. 52. CES goes on to identify a number of costs or cost categories that may be related to the Ameren Companies' efforts to acquire power in the context of the auction, and as a matter of logic and as a matter of ensuring again an appropriate price signal, they rightfully conclude that these costs should be tracked through the MVAF. See CES Br., p. 53.

The CES also argues that the SPA costs should be allocated on a per kwh basis. CES Br., p. 54-55. The Ameren Companies are in agreement. To our knowledge, no party has opposed a recovery of these costs on any other basis but on a per kilowatt hour basis.

The CES then claims that the Ameren Companies have improperly failed to specify what costs are being included in the SPA, as well as failed to propose a reasonable allocation method. Yet, CES does describe the cost categories as had been previously disclosed by the Ameren Companies. CES Br., pp. 51-52.

CES refers to the SPA costs as identified as being "general cost categories." This is an erroneous description. CES would be correct if the description of SPA costs is limited to "overhead and administrative expenses with the procurement of power and energy" but that is not the description. Rather, the Ameren Companies have expressly detailed and identified the costs to be included such as professional fees, costs of engineering, insurance, and the like. Frankly, a more detailed description of the costs to be recovered cannot be envisioned.

Whatever the description, though, the burden remains on the Ameren Companies to justify and explain in the next delivery service rate cases why these costs are properly included as SPA costs. This requirement alone should alleviate the CES' concern.

8. Rider MV – Market Value Adjustment Factor

a. Accounting reconciliations

The Ameren Companies agree with the Staff's brief in subparts (c) and (d) under this section at pages 180-182. In particular, Ameren Companies acknowledge the Staff's acceptance of the Ameren Companies' alternative method by which to calculate the interest factor associated with contingency supply purchases, as also explained in the Ameren Companies initial brief at pages 134-135.

9. Rider MV – Subsequent review / Contingencies

The Ameren Companies are in agreement with Staff's representations regarding Staff's oversight recommendations as set forth on pages 182-183 of its brief. In addition, the Staff has agreed to certain modifications made by the Ameren Companies as outlined in Respondent Exhibit 16.0, pp. 7-9.

10. Alternative proposals re interruptible service

The IIEC brief addresses its members' desire for a demand driven or interruptible service in the context of the proposed auction. As stated in our initial brief, the Ameren Companies and IIEC reached an agreement and this is noted at pages 42-44 of the IIEC brief. The Ameren Companies again strongly recommend that the Commission accept the alternative proposal as described in both the Ameren Companies and IIEC initial briefs.

11. Other

In its brief, IIEC notes that the Ameren Companies had agreed to bill Rider RTP-L customers for capacity on a per kilowatt day basis. IIEC Br., pp. 45-46; Resp. Ex. 15.0, p. 18. IIEC also recommends that Rider MV be modified to reflect the per kilowatt day billing. In response, the Ameren Companies had no objection to modify Rider MV to reflect the per kilowatt day billing for Rider RTP-L customers.

C. Additional Tariff and Rate Design Issues

1. Staff's rate increase mitigation proposal

The Ameren Companies indicated in their testimonies and in the initial brief, that there was no conceptual opposition to the Staff bill impact proposal. Resp. Exs.15, pp. 2-3, 22.0, p. 3; Ameren Br., pp. 138-139. Notwithstanding conceptual acceptance of the proposal, the Ameren Companies also explained why the Commission may want to consider in full the Staff bill impact proposal or any other rate mitigation proposal in the next set of delivery service rate cases. In addition, the Ameren Companies maintain in the event the Commission were to adopt the Staff bill impact proposal, now or later, that at the very least there should be a modification such that similar customer classes of the BGS-FP (i.e., under 1MW) product would still see the same price for the commodity. That is, an unintended consequence associated with the Staff proposal would, for example, result in residential customers in one utility service territory paying a different price as compared to another, even though the very same commodity is being purchased in the same auction at the same price for all.

Response to Staff

Staff argues against the Ameren Companies proposal to ensure that residential customers pay the same price for the commodity. Staff asserts this would undermine the objective associated with the bill impact proposal. ICC Staff Br., pp. 190-191. This is not completely accurate. At best, ensuring that the residential customers throughout the Ameren Companies footprint pay the same price will only somewhat modify Staff's bill impact proposal. Notably, Staff never in its testimonies or in its brief addresses the Ameren Companies main concern directed to issues of customer understandability and simplicity. It has, and remains to be, Ameren Companies concern that these customers should not be paying a different price. And frankly, it should be the Commission's concern as well. The Commission, should it accept Mr. Lazare's approach absent our modification, will need to explain away why a residential customer in the AmerenCILCO service territory is paying a different price than a residential customer in the AmerenIP service territory.

Staff's only counter is that because it is not known how much of an increase there will be for customers within an individual company, possibly a certain group of customers could face an increase that exceeds the level deemed reasonable under Staff's bill impact proposal. ICC Staff

Br., p. 191. Yet, there is no evidence to suggest that any group of customers taking the subject BGS product will face an increase that far exceeds the levels deemed reasonable under Staff's bill impact proposal; only conjecture. More to the point—if the Staff proposal would mean, say that an AmerenCILCO residential customer will see a 20% increase, what does it matter that an AmerenCIPS customer sees a 22% increase? The Staff bill impact test still imposes a cap-which is apparently the desired goal but the customers are paying the same price.

Turning to the issue of deferring a final decision with regard to the timing of the bill impact proposal in this regard, the Staff takes issue with certain of the Ameren Companies' positions. ICC Staff Br., pp. 185-191. As an aside, the Staff attempts to show an inconsistency in the Ameren Companies' position by noting we have proposed that residential heating customers receive a declining block rate during the non-summer months, which mitigates concerns surrounding customer rate impact. ICC Staff Br., p. 186. In response, the reasoning for the declining block rate is as much about rate design as anything else. The Ameren Companies have been upfront in stating that the BGS rate design is intended to reflect proper causation principles. Indeed, the translation prism takes into account seasonal variations, on- peak and off -peak distinctions, and at certain customer levels, voltage differences. Resp. Ex.5.0, pp. 18-32. All these rate design factors, including the declining block rate as indicated, serve to mitigate concerns of undue customer rate impact. Nonetheless, while proper rate design does mitigate against undue rate impacts, the Staff proposal is not about rate design in any sense; it is about shifting customer class cost responsibility irrespective of rate design.

While the Staff's desire to ensure undue bill impacts to those customer classes taking the under 1 MW product is understandable, in some ways the Staff argument explains the Ameren Companies reasoning for putting off a final decision until the delivery service rate case. The

Staff acknowledges until the auction is conducted and the delivery services rate case is complete, potential bill impacts will not be known and that this uncertainty makes it difficult to develop proposals for mitigating the bill impact. ICC Staff Br., p. 186. We agree. The problem is developing the parameters of a bill impact proposal without knowing the required inputs.

Similarly, Staff argues that the consolidation and realignment of Ameren Companies' rates "can create adverse bill impact independent of any change in power costs" as part support. ICC Staff Br., p. 186. Again, the Staff cannot know what, if any, adverse bill impacts will result from rate consolidation and certainly at this point in time neither does the Ameren Companies. Once more, we reiterate the very real concern of prematurely determining what the appropriate parameters are associated with any bill impact or rate mitigation proposal.

Staff holds these proceedings are more appropriate for this detrmination as this is an issue directly related to the translation prism. ICC Staff Br., p. 190. Staff does not explain why the relevance of the translation prism in these dockets means in a later proceeding, that the Commission could not consider a bill impact proposal which incorporated appropriate parameters that would affect the translation prism in another docket, namely the delivery service cases. There is nothing sacrosanct about the Commission's decision affirming Rider MV, which incorporates the translation prism in these proceedings, but then in a later docket, considering rate changes that might have bearing on Rider MV, specifically the translation prism. As a practical matter, rates often undergo design changes.

Staff also offered that delaying the issue would prevent bidders in the upcoming auction from receiving a key piece of information concerning the recovery of power prices from customers. Staff asserts that if the bill impact issue is addressed in the delivery services case, the auction will be held before suppliers find out whether power costs would be subject to bill impacts constraints. ICC Staff Br., p. 190.

In reply, Staff's assumption is not correct. Suppliers can now postulate as to what they believe the prices for power will be coming out of the auction; they can perform this analysis later. In fact, as the time to the auction grows nearer, it is reasonable to assume their estimates will be better and more accurate than, say, now as Staff presupposes. Further, when the Ameren Companies file their delivery service cases later, information within that filing will prove to be useful to the suppliers. They will know, as will the Staff, what the Ameren Companies intend in terms of their full delivery service revenue requirements. It is reasonable to assume that suppliers in conjunction with their estimates of power prices can make some assumptions about the post 2006 level of the bundled revenue requirement and, consequently, have better information than they do currently.

Staff may agree that while it is true later this year or early next year more and better information will be known by which to assess a bill impact proposal, because the Commission will not have approved one, whatever it is, the suppliers will still be without direction. As was noted in the initial brief, there is nothing to prevent the Commission from saying it will support a bill impact proposal along the lines the Staff is now proposing, but then agree to revisit the issue in the delivery service rate cases in order to finalize the appropriate parameters. This confirmation would serve to alleviate the uncertainty, if any, of a rate mitigation proposal.

Response to Dynegy

Like the Staff, Dynegy claims that suppliers would benefit from knowing now whether there will be a rate mitigation proposal along the lines that Staff is proposing. Dynegy Br., pp. 31-32. As stated above, knowing a percentage cap of a customers' bill is practically meaningless when the end result cannot be predicted.

The customers' bills will be made up of essentially two parts, the delivery service charges and the BGS charges. Dynegy surely can estimate what the commodity price will be, and no doubt will have better information as to what that price will be closer in time to the auction. Similarly, when the Ameren Companies file their next set of delivery service cases, Dynegy and other suppliers can take that information in estimating the customers' bundled bill.

The point being, if the auction is held in September 2006, and the delivery service rate cases are filed later this year, and the Commission directs the Staff to re-file the same bill impact proposal, or whatever bill impact proposal Staff then believes appropriate in conjunction with the next set of delivery service cases, it is fair to say that the suppliers will have more and better information nearer in time to the auction than they do currently.

D. Uniform BGS Pricing Across Ameren Footprint, Regardless of Rate Mitigation Proposal

1. Rider D – Default Supply Service Availability Charge

a. Description of Rider D

b. Opposition to Rider D

The Staff, IIEC and CES continue to argue against the imposition of Rider D charges. Many of their arguments have been addressed by the Ameren Companies. Ameren Br., pp. 141-143.

The Commission's decision will ultimately come down to these considerations: Is the Commission assured that there will be suppliers interested in bidding on the BGS-LRTP load? If the Commission is so satisfied, then frankly the Rider D charge need not be imposed. If the Commission concludes that sufficient suppliers will bid on the BGS-LRTP load, but in fact they do not, what are the consequences?

When a customer opts to take the BGS-LRTP product, or the customer loses its third party supply, and defaults to the BGS-LRTP product and there were no suppliers for the product, the Ameren Companies will have to procure capacity in order to serve those customers. Obviously, what that price will be cannot be known at this time, and those customers will be subject to the whim of the market. Furthermore, while the Ameren Companies proposal to spread the Rider D charges across all BGS-LRTP customers and customers over 1 megawatt (because these are the customers who may opt for third party supply), would result in a minute charge, in the event the Ameren Companies are required to procure capacity in the market for a select few customers who opted for BGS-LRTP product or ended up taking the product as a default because they lost the third party supply, it stands to reason that these few customers will pay a much larger charge for capacity then would otherwise be paid under the Ameren Companies' proposal.

There is no evidence in the record, one way or the other, that suppliers will bid for this particular product. The few that are participating in the case have offered no testimony or opinions on this subject. And, the auction is still nearly a year away, creating yet more uncertainty. It is our goal to eliminate or minimize this uncertainty by ensuring a revenue stream to the suppliers that may not otherwise be inclined to bid on this product. There is no dispute that the New Jersey model employs the same kind of incentive, and has been successful. On the whole, it makes more sense to err on the side of caution and have all customers who are eligible for this product pay a very small charge, and have greater assurance that suppliers will be interested in bidding on this load.

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

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

4. Treatment of Uncollectibles

In terms of the recovery of uncollectible expense, the Ameren Companies agree it is not proper to track this expense through the MVAF. Resp. Ex. 16.0, p. 3; Ameren Br., p. 144.

The method and value associated with uncollectible expense should be developed in the context of the next delivery service rate cases because at that time the entirety of the uncollectible expense for the test year will be known. Once the proper amount is allocated for delivery services, then the difference can be allocated and recovered as part of the BGS rates. This is the one fundamental difference between the SPA costs and uncollectible expense. There will be no SPA costs associated with the provision of delivery services; there will be uncollectible expenses associated with both delivery services and BGS.

The other reason for treating uncollectible costs differently, again, is because the SPA costs are directly tied to the market products being offered and thus its importance in ensuring that SPA costs are properly reflected as part of the market price.

5. Credit risk and other administrative costs

6. Integrated Distribution Company issues

The CES makes its plea for the Commission to initiate a docket in which to review communication materials that stem from the Ameren Companies. CES Br., pp. 61-62. Little more than its request is offered in support. The Ameren Companies have explained why the Commission should reject in full the CES recommendation. Resp. Exs.16.0. p. 15, 23.0, p. 7; Ameren Br., pp. 144-145. We only add in response to the CES statement that the Ameren Companies intend to get the "….word out to customers about the supply choices available from Ameren . . .," that the Ameren Companies have been getting the "word out" for years since they were integrated distribution companies and there has been no concern with communications with customers.

VIII. Conclusions and Mixed Legal/Factual Issues

A. Legality of Rider MV

B. Issues Concerning Compliance of Auction Process Details with Illinois Law

C. Other conclusions and mixed legal/factual issues

IX. Other Issues

A. Renewable Energy and Energy Efficiency Issues (not already addressed above)

B. Additional Other Issues

Dated: November 2, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Laura M. Earl, certify that on November 2, 2005, I served a copy of the foregoing Reply Brief of the Ameren Companies by electronic mail to the individuals on the Commission's official Service List for Dockets 05-0160, 05-0161, 05-0162.

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