

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	:	
	:	
Proposal to implement a competitive procurement	:	No. 05-0159
process by establishing Rider CPP, Rider PPO-MVM,	:	
Rider TS-CPP and revising Rider PPO-MI	:	

ILLINOIS INDUSTRIAL ENERGY CONSUMERS BRIEF ON EXCEPTIONS

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ILLINOIS INDUSTRIAL ENERGY CONSUMERS BRIEF ON EXCEPTIONS

COME NOW the Illinois Industrial Energy Consumers (IIEC), by their attorneys, Lueders, Robertson & Konzen and Conrad Reddick, and pursuant to 83 Ill. Adm. Code Part 200.830 and Section 10-111 of the Public Utilities Act (the “Act” or “PUA”) (220 ILCS 5/10-111), offer the following Brief on Exceptions to the Administrative Law Judge’s Proposed Order (“Proposed Order”) dated December 5, 2005.

IIEC agrees with and supports portions of the Proposed Order. However, it respectfully takes exception to the Proposed Order’s:

- (1) adoption of a 35% load cap (V.C.2.);
- (2) failure to address the mismatch between the auction products for 400 kW to 3 MW customers on the ComEd system and the 1 MW to unlimited demand customers on the Ameren system in approving the common auction for ComEd and Ameren (V.G.3. and V.I.3.);
- (3) failure to adopt IIEC’s recommendation that ComEd be required to work with PJM, MISO, and Ameren to develop a common deliverability test for generating resources (V.G.3. and 4.);
- (4) failure to include over 3 MW customers in the CPP-A auction; (V.I.3.)
- (5) failure to approve a separate auction segment for over 3 MW customers (V.I.3.);
- (6) failure to make the offering of a multi-year auction product to large customers a condition of auction approval (V.I.3.);
- (7) failure to require pre-qualification of electric loads over 3 MW for the fixed price product (V.I.3.);
- (8) failure to require ComEd to include a demand charge component in the rate for over 1 MW customers (V.I.4.);
- (9) failure to adopt IIEC’s recommendation to bill self-generating customers on a per kW-day basis on those days when energy is actually taken from ComEd (VII.A.13); and

- (10) failure to adopt IIEC’s recommendation to allow over 3 MW customers to participate in PJM non-ALM demand response programs. (VII.A.14).

The captions and numbering for the exceptions discussed in this brief follow the captions of the Proposed Order.

V. Auction Design Issues

C. Multiple Round Descending Clock Format

2. Load Caps

Beginning at page 85, the Proposed Order discusses and approves ComEd’s proposed incorporation of load caps in the auction process. A load cap represents the maximum percentage of load in any ComEd auction that a single supplier would be allowed to bid on and win (McNeil Dir. ComEd Ex. 3.0 at 47:1011-1022), irrespective of its ability to serve more load at lower prices.¹ A load cap is a deliberate restriction of competitive market forces, with the objectives of affecting the auction process and pre-determining auction outcomes. (*Id.* at 47:1011-1012). (LaCasse Dir. ComEd Ex. 4.0 at 62:1486-1490; LaCasse Reb. ComEd Ex. 11.0 at 26:611-612 and 28:669-672.

In its testimony and briefs, IIEC supported elimination of this mechanism for managing auction outcomes. (*See, e.g.*, IIEC Init. Br. at 13-25; IIEC R. Br. at 7-16). Load caps will have the singular effect of limiting the number of tranches filled by large, efficient (*i.e.*, lower-price) suppliers. (ComEd R. Br. at 68; IIEC Init. Br. at 13-14; Collins Dir. IIEC Ex. 3 at 9:171-10:201). Thus, load caps -- if they have any effect at all -- can only increase prices to consumers, since it is

¹When citing pre-filed testimony in this Brief on Exceptions, IIEC has provided citations to the page number in the format of “page(s):line(s)” or “page:line-page:line.” References to the transcripts in ComEd 05-0159 will be designated as “Tr._____”. References to the joint transcripts in ComEd 05-0159 and Ameren 05-0160, et al., will be designated as “Jt. Tr. _____.”

axiomatic that in competitive markets, constraining supply raises prices. Only the rhetorical alchemy of load cap advocates supports the Proposed Order's contrary conclusion.

Nonetheless, the Proposed Order rejects IIEC's proposal to eliminate this gratuitous market intervention, and accepts ComEd's proposal for a 35% load cap. (PO at 87). Thus, before a single auction is held, the Proposed Order has rejected the notion that the proposed "competitive" auction process should actually rely on open competition to determine the winning bids. The Proposed Order does so even though ComEd asserts, and the Proposed Order finds, that competitive forces (not administrative decisions) will produce "least-cost" supply, and just and reasonable rates. (PO at 60; *also see* IIEC R. Br. at 8).

The Proposed Order describes the load cap as a "competitive safeguard, limiting the influence that any one bidder can have on the results of the auction," and as serving to "limit the utility's exposure to any one particular supplier, thereby shielding the utility and its customers from risk." (PO at 87). The Proposed Order also "finds that the benefits provided by a load cap outweigh any potential disadvantages." (*Id.*). The disparities between these claims of load cap advocates and their evidence in support of managed competition and predetermined auction outcomes are detailed in IIEC's briefs. (*See* IIEC Init. Br. at 13-25; IIEC R. Br. at 7-16). The load cap will not provide the benefits that its proponents promise or that the Proposed Order presumes, and the Proposed Order's conclusion is not consistent with the evidence of record.

First, the Proposed Order does not disclose how the alleged benefits it cites were weighed against the adverse effects of a load cap's deliberate distortion of competitive outcomes. (*See* PO at 87). This absence of meaningful analysis is not sustainable. Second, although the Proposed Order recounts numerous claims of benefits from load cap advocates (PO at 85-86), it relies on only two

of the alleged benefits, as the basis for its recommended decision: mitigating market competition problems and reducing supplier risks. Those particular alleged benefits were shown to be without foundation. (*See* IIEC Init. Br. at 18-25; Collins IIEC Reb. Ex. 6 at 5:89-11:215).

The Proposed Order accepts the load cap as a "competitive safeguard, limiting the influence that any one bidder can have on the results of the auction." (PO at 87). In fact, the load cap is a barrier to open competition and to supply at the lowest prices. If a large bidder affected by the load cap is the lowest price bidder, why would the Commission wish to limit its price-lowering influence in the auction? It should not. Yet, the Proposed Order would prevent any supplier from bidding on or winning tranches amounting to more than 35% of the auctioned load -- even if its bid would result in substantially lower prices to ComEd and its retail customers. (Collins Dir. IIEC Ex. 3 at 7:131-140; Hogan Dir. ComEd Ex. 8.0 at 51:1084-1086).

The use of a load cap to address a weakness in relevant markets should be rejected. Since the Proposed Order concludes those markets are adequate to support an auction, capture least cost supplies, and yield just and reasonable rates, a load cap for that purpose would be superfluous. (PO at 60). Moreover, if auction outcomes are not constrained by a load cap, the most extreme auction outcome is that all tranches (instead of only 35%) would be filled by the lowest-priced supplier. Similarly, weaknesses in the auction process that permit anti-competitive bidding strategies should not be addressed through a load cap that penalizes consumers with higher prices. (*See, e.g.*, ComEd R. Br. at 70). Finally, ComEd has not shown that a load cap is actually needed. As Staff's auction expert confirmed, a successful auction was conducted in New Jersey without a load cap. (Salant Jt. Tr. 1061-1063).

The Proposed Order also accepts the load cap as a means to reduce exposure to supplier credit and performance risks. Indeed, no party has questioned the adequacy of those credit requirements. (PO at 151-153). Yet, those precise risks are specifically addressed – according to Company, adequately addressed – by the comprehensive credit requirements incorporated in the auction rules approved by the Proposed Order. (LaCasse Jt. Tr. 908, 910; IIEC Init. Br. at 23-24; PO at 153-154). A load cap for risk management purposes, therefore, would be duplicative and unnecessary, and provide no incremental benefit.

Increased supplier diversity is another aspect of the supplier risk management offered as a benefit of a load cap. (PO at 85). ComEd and others claim more bidders will be attracted to an auction by a load cap. (*See, e.g.*, MWG Init. Br. at 12-13). But, the load cap will exclude low-priced supplies and constrain large, efficient suppliers (the most aggressive bidders) in favor of more numerous, but likely higher-priced, suppliers. (Salant Jt. Tr. 1087). That provides no benefit to consumers. The identity of the winning suppliers -- each of which must provide service and performance assurances -- is of no economic consequence to consumers. Finally, a load cap is suitable for promoting market development only if the Commission is willing to endorse a policy of artificially increasing prices to subsidize otherwise uneconomic competitors -- *i.e.*, a policy of "Let's get prices up so we can have competition."

Aside from the purported benefits of a load cap, the Proposed Order's rejection of IIEC's proposal, not to manage auction outcomes by imposing a load cap, was (according to the Order) based in part on IIEC's use of hypothetical situations to illustrate the adverse effects of load caps. (PO at 87). However, **all** record evidence respecting load cap scenarios and auction clearing prices of the "not-yet-run" Illinois auctions is hypothetical to the same extent. ComEd provided no

objective, quantitative analysis to support its conclusions about the effects of load caps -- only opinion testimony. (*See* IIEC Init. Br. at 19, 22; also *See e.g.*, LaCasse Dir. ComEd Ex. 4.0 at 62:1472-1475). Accordingly, IIEC's limited use of hypothetical scenarios to illustrate the proposal's substantive flaws cannot be a valid, lawful basis for rejection of IIEC's position.

More important, the Proposed Order ignores the substantive evidence on the effects of load caps that the IIEC hypotheticals served to illustrate. The evidence detailing the load cap mechanism's flaws is reviewed at some length in IIEC's Reply Brief. (*See* IIEC R. Br. at 10). There is the unrebutted testimony, from proponents and opponents alike, that a load cap, if it works as designed, will restrict large suppliers. For ComEd's customers, "the large suppliers are likely also the low-cost suppliers in Illinois." (Salant Dir. Staff Ex. 1.0 at 68:1533-1534). If a load cap excludes low-cost supplies from the auction, as seems inevitable if a load cap is imposed in an Illinois auction, auction prices and prices to consumers cannot be lower, and they probably will be higher. (Collins Dir. IIEC Ex. 3 at 9:174-177). The proposed load cap is a gratuitous market intrusion that benefits only suppliers, at the expense of consumers. (IIEC Init. Br. at 24).

Finally, the Proposed Order's acceptance of a load cap apparently was based, in part, on IIEC being the only party actively opposing load caps. (*See* PO at 87). Whether a proposal is just and reasonable is not a matter of popularity, but of law. On that point of law, the burden of demonstrating the satisfaction of all legal requirements is on the utility, not other parties. (220 ILCS 5/9-201). ComEd and other load cap advocates have not shown that imposing artificial load caps is beneficial, that the resulting (likely higher) rates are just and reasonable, or that administratively pre-determining auction outcomes will yield least-cost electricity supplies. As a matter of sound policy, the Commission should not choose competition over regulatory price determinations while,

at the same time, imposing a regulatory load cap to manage that competition and predetermine the "competitive" auction's results.

The only certain result of imposing a load cap is the appearance of active competition that allows auction supporters to say "X different bidders won tranches." This focus on the number of bidders, as opposed to lower prices, ignores the effect on consumers of limiting access to lower-priced electricity supplies. The Commission, however, cannot lawfully ignore those consequences. The Commission is charged with assuring just and reasonable retail tariff rates. Imposing artificial limitations on access to lower priced supplies merely to provide the appearance of active markets, competition and a "successful" auction is inconsistent with statutory "just and reasonable" ratemaking standards. (*See* 220 ILCS 5/9-201).

Load caps are an artificial barrier to open competition and low-priced supplies. The Proposed Order should be modified to eliminate this artificial constraint on the amount of low-cost power and energy that efficient suppliers, able and willing to provide large quantities of electricity at prices lower than their competitors, would be allowed to supply. (IIEC Init. Br. at 13-14). The Proposed Order should be modified as shown below, by substituting the underlined language for the current conclusion of Section V.C.2 of the Proposed Order. (PO at 87).

e. Commission Conclusion

~~The Commission concludes that ComEd's proposed load cap, as modified in its rebuttal testimony to be set at 35%, is appropriate. Load caps serve as a competitive safeguard, limiting the influence that any one bidder can have on the results of the auction. At the same time, load caps limit the utility's exposure to any one particular supplier, thereby shielding the utility and its customers from risk. Staff and the vast majority of stakeholders agree, with HEC the lone opponent of the proposed load cap. The Commission is not persuaded by the HEC's suggestions that a load cap could, in certain hypothetical situations, increase auction clearing prices, and finds that the benefits provided by a load cap outweigh any potential disadvantages.~~

The Commission finds, based on both logic and the testimony of record, that the imposition of load caps is likely to increase the prices paid for electricity and rates for consumers. The record does not establish that the proposed mechanism to manage competitive outcomes will provide more benefits than it costs. Many of the claimed benefits of load caps, like credit protection and supplier diversity, should be provided by competition or by other more targeted elements of the auction process. Finally, the Commission cannot simultaneously rely on the competitiveness of the wholesale market in approving the proposed auction then rely on weaknesses in that market to justify distorting that same competition through a load cap that predetermines auction outcomes. Accordingly, the auction process, as approved by the Commission, does not include the proposed load caps.

G. Common vs. Parallel Auction

3. Between ComEd and Ameren Products

The Proposed Order correctly concludes that fixed price and hourly products for ComEd and Ameren should be included in a common auction and that switching between ComEd and Ameren fixed price products and switching between ComEd and Ameren hourly products should be permitted. (PO at 109-110). IIEC addressed this issue in its Initial Brief. (IIEC Init. Br. at 28-29). However, the Proposed Order does not address the need to facilitate such switching by encouraging the development of a common deliverability test (for generation resources in MISO and PJM used to serve load in the ComEd and Ameren service areas) or creating appropriate customer segments for the auction as recommended by IIEC. (*Id.*).

The record in this case shows that absent a common deliverability test, there is likely to be little switching between ComEd and Ameren products, because the capacity or financial equivalent of capacity underlying the bids on these products in each service area would not be interchangeable. (Dauphinais, Dir. IIEC Ex. 2 at 7:162-164). Absent a common deliverability test, the results of the auction might be very different for the ComEd and Ameren load zone. The presence of a common deliverability test would tend to minimize the risk of an unsatisfactory price

result in one load zone versus the other load zone. Such an outcome could result in the rejection of the results of an auction for a particular load zone. Therefore, it would be risky for bidders to move their bids from one load zone to another. (*Id.* at 7:165-8:174).

ComEd itself has recognized the importance of, and the benefits of a single or common deliverability test. In its Reply Brief ComEd asserts that PJM operates markets in 13 states and the District of Columbia. It suggests these markets are operated on an integrated basis and include, among other things, “. . . a regional deliverability test applied to all capacity resources.” (ComEd R. Br. at 45). The regional test to which ComEd refers is applicable to PJM. (ComEd R. Br. at 45-46). There is no common deliverability test applicable to generating resources, in MISO and PJM, used to serve load in the ComEd and Ameren service territories in Illinois.

No party has presented evidence to contradict these facts. The record, therefore, supports the conclusion that the establishment of a common deliverability test for generation resources within the MISO and PJM footprint, used to serve load within the Ameren and ComEd service areas, would encourage and facilitate switching between ComEd and Ameren products to the benefit of customers. If the Commission wishes to encourage and to facilitate product switching, it should indicate it believes the existence of such a test would benefit such customers and direct ComEd, without delaying the implementation of the auction, to make every effort to develop such a test in conjunction with PJM, MISO and Ameren consistent with IIEC’s recommendation. (*See* Section V.I.4. below).

To further ensure that customers receive the full benefit of the common auction, the Commission should take additional steps to enhance the practicality of product switching between ComEd and Ameren. The Proposed Order should be modified to recognize that there is a need for

greater granularity in the customer segments for auction purposes. As IIEC noted, there is a substantial difference between the customer segments for non-residential customers in the ComEd CPP-A auction and those in the Ameren BGS-LFP auction. Ameren proposes a BGS-LFP auction segment consisting of customers with demands of 1 MW to hundreds of megawatts. ComEd recommends (and the Proposed Order adopts), a CPP-A auction segment consisting of customers with demands of 400 kW to 3 MW. Thus, the ComEd and Ameren customer segments barely overlap, let alone yield consistent load shapes.

The record in this case demonstrates there is a sufficient difference in the load characteristics, between customers with 400 kW to 1 MW demand and customers with 1 MW to 3 MW of demand, to justify a separate auction for each of these customer groups. Specifically, the record discloses that the 400 kW to 1 MW customers have lower load factors and higher on-peak energy use and lower off-peak energy use than the 1 MW to 3 MW customers. (Domagalski and Spilky Reb. CES Ex. 6.0 at 13:265-275). In fact, based in part on these differences, at least one party in this case recommended a separate auction for the 400 kW to 1 MW customer group and the 1 MW to 3 MW customer group, respectively, in the ComEd service territory. (Domagalski and Spilky Reb. CES Ex. 6.0 at 13:341-342). The record also shows there may be a substantial difference in the load characteristics of the customers with demands of 3 MW to hundreds of megawatts and the load characteristics of customers with less than 3 MW of demand. (Stephens Dir. IIEC Ex. 1 at 20:447-449).

Thus, unless greater granularity in the customer load segments is implemented, the fixed price product suppliers bid on in the ComEd CPP-A auction will be substantially different from the

fixed price product in the Ameren BGS-LFP. As a result, switching will be less likely and the full benefit of a common auction will be less likely to accrue to customers.

Therefore, the Proposed Order should be modified to require the creation of a separate auction segment for larger customers (customers 3 MW and over). This would help to ensure that the full benefits of a common auction flow to end-use customers in Illinois.

IIEC specifically recommends that the conclusion in Section V.G.3.e. at pages 110-111 be modified to read as follows:

e. Commission Conclusion

The Commission finds the fixed price and hourly products of ComEd and Ameren to be included in the Illinois Auction divided between the Fixed Price Section (within which switching is permitted), and the Hourly Price Section (within which switching is also permitted), as identified in ComEd Ex. 11.5(b), will be subject to common auction, as proposed by ComEd. The Commission agrees with IIEC that a common deliverability test and a separate auction segment for over 3 MW customers will help end-use customers to achieve the full benefits of a combined auction. IIEC's recommendation on the common deliverability test and a separate auction segment for over 3 MW customers are addressed in Sections V.G.4. and V.I.3. of this Order.

4. Common Deliverability Test

The Proposed Order discusses the need for a common deliverability test for generation, in the combined PJM-MISO footprint, delivering power and energy to load in the ComEd and Ameren service areas. (PO at 111-112). The Proposed Order reports the evidence and arguments of Staff and IIEC, the only two parties whose testimony addressed the need for a common deliverability test. But, the Proposed Order does not decide the central question raised by IIEC.

In its testimony and briefs, IIEC recommended that, as a condition of any approval of an auction process, the Commission require ComEd to work for the development and implementation

of a common deliverability test for capacity resources, in the combined PJM-MISO footprint, used to deliver power and energy to load in the ComEd and Ameren service areas. (IIEC R. Br. at 18-19 citing Dauphinais Dir. IIEC Ex. 2 at 2:34-47; IIEC Init. Br. at 32). Staff commented that **if** IIEC was suggesting that the auction be delayed until a common deliverability test was implemented, then IIEC's proposal should be rejected. (Staff Init. Br. at 91). As IIEC made clear in its Reply Brief, IIEC did not and does not propose any delay in the Commission's decision, or the auction, pending development of a common deliverability test. (IIEC R. Br. at 20). ComEd did not take a position on this issue. In fact, no party objected to IIEC's recommendation to "require ComEd to work with Ameren, PJM and MISO to establish a common deliverability test for capacity resources within the combined MISO and PJM footprint to the combined ComEd and Ameren load zones in Illinois." (PO at 111).

The Proposed Order, however, merely concludes that "approval of ComEd's proposed auctions should not be withheld until such a common deliverability test is established." (PO at 112). IIEC is aware of no party that proposed such a delay in either the Commission's ruling on ComEd's proposal or the auction itself. As a result of its unduly narrow focus, the Proposed Order failed to rule on the core recommendation of IIEC's experts -- that ComEd be required to work with PJM, MISO, and Ameren to develop a common deliverability test. (PO at 112; IIEC R. Br. at 20).

Currently, separate and distinct tests are required by PJM and MISO to assess the ability of particular resources to deliver power to load in each Regional Transmission Organization's ("RTO") respective footprint. The significant practical and economic hurdles to the use of resources in one RTO for load in another make it unlikely that bidders will actually switch between ComEd and Ameren auction products. (Dauphinais Dir. IIEC Ex. 2 at 6:138-7:164). The lack of a common

deliverability test will bifurcate the market. (IIEC Init. Br. at 31). No party has disputed these effects of the disparate treatment of PJM and MISO capacity resources used to serve load in Illinois. Consequently, the Commission's effort to make the ComEd and Ameren auctions more competitive by authorizing bidders to switch supplies among auction segments is effectively nullified. (*See* Section V.G.3 *supra*).

In this connection, IIEC notes its disagreement with the conclusion (in Section IV.E.2. of the Proposed Order) that "the 'seam' between PJM and MISO will not affect the competitive environment in either RTO." (PO at 65). This overly broad language is belied by the problems that stem from the disparity in deliverability tests for the PJM and MISO footprints. Those problems are well-described in testimony. (*See, e.g.,* Dauphinais Dir. IIEC Ex. 2 at 7:145-158). Moreover, mitigation of the "seam" has been found necessary by FERC in its order conditionally authorizing ComEd's incorporation into PJM. (*See* Order conditionally accepting compliance filings, providing guidance on Midwest ISO and PJM structure, and instituting Section 206 investigation, 2002 FERC Lexis 1603 at **25, where FERC stated a common market for MISO and PJM would minimize seams issues.) This overly broad language should be deleted lest it be interpreted as an indication the Commission is no longer concerned about MISO and PJM seams issues.

While the Commission's decision on the auction should not be delayed until a common deliverability test is implemented, the Commission should be resolute in (a) requiring that ComEd and Ameren work with PJM and MISO to establish a common deliverability test for resources located in the combined MISO-PJM footprint to serve load in the combined Ameren and ComEd service territories and (b) setting a date certain for implementation of a common deliverability test. Until that is accomplished, utilities and RTOs should be ordered to work toward that goal, with

regular reports (every 90 days) to the Commission, so that it can track their progress. This position is in no way inconsistent with either the current conclusion of the Proposed Order or implementation of the auction without delay.

Accordingly, the paragraph designated VII.G.4.c. at page 112 of the Proposed Order should be supplemented by adding the underlined language at its end:

c. Commission Conclusion

Based on the record, the Commission concludes that approval of ComEd's proposed auctions should not be withheld until such a common deliverability test is established. However, the lack of a common deliverability test may adversely affect the competitiveness of ComEd's proposed auction. Therefore, as a condition of its approval of ComEd's proposed auction, the Commission requires that ComEd work with Ameren, PJM and MISO to establish, as soon as practicable, a common deliverability test for the delivery of resources in the combined PJM and MISO footprint to loads in the combined load zones of ComEd and Ameren in Illinois. In addition, ComEd will regularly report to the Commission on its plans and the status of its efforts to develop a single common deliverability test. The first report should be presented within 90 days of the Commission's order in this proceeding. Subsequent reports should be provided every 90 days thereafter until the single common deliverability test is implemented. The Commission recognizes that a single common deliverability test cannot be established without the cooperation of other entities, PJM and MISO.

In addition, IIEC recommends modifying the first and second sentences of Section IV.E.2.d. at page 66 of the Proposed Order as follows:

The Commission concludes the 'seam' between PJM and MISO will not affect the competitive environment in either RTØ ~~impair the ability of the PJM market to support ComEd's proposed auction.~~ The record shows that such 'seam' has diminished, and that ~~the RTØs have already moved towards creating a joint and common market~~ it may diminish further in the future.

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

3. Treatment of Customers (≥ 3 MW) Taking Services Subject to Competitive Declaration

IIEC, DOE, BOMA and Staff have recommended ComEd include over 3 MW customers in the CPP-A auction (*See* IIEC Init. Br. at 105-106; DOE Init. Br. at 1-13; Staff Init. Br. At 102-106; BOMA Ex. 2.0 at 6:126-129). IIEC addressed this issue in its Initial and Reply Briefs. (IIEC Init. Br. at 32-45; IIEC R. Br. at 21-29). The Proposed Order recommends the Commission conclude that: “. . . IIEC and DOE have not shown that ComEd is required to provide such a product to those customers.” (PO at 125).

The Proposed Order further suggests that ComEd cannot be required to provide such a product “. . . because the over 3 MW customer class has been declared competitive . . .” (*Id.* at 125). Finally, the Proposed Order concludes that ComEd has presented evidence that the over 3 MW customers should be excluded from the CPP-A auction and offered service under the hourly market. (*Id.* at 125). The Proposed Order has essentially adopted the conclusion recommended by ComEd on this issue. (*See* ComEd Draft Order at 101). Also, the Proposed Order does not address IIEC’s recommendation to create a separate auction segment for over 3 MW customers, nor does it address the IIEC recommendation that over 3 MW customers prequalify their load.²

a. IIEC respectfully disagrees, for several reasons, with the Proposed Order’s recommendation that the Commission conclude that over 3 MW customers should not be included in the CPP-A auction..

²Presumably, the Proposed Order does not address these issues because of its rejection of the IIEC position on including over 3 MW customers in the CPP-A auction. These issues need to be addressed when the Commission modifies the Proposed Order to adopt the IIEC position.

First, ComEd's conclusion, as adopted in the Proposed Order, appears to establish one standard of proof for customers and a separate, lesser standard for ComEd. Under this approach, customers are required to prove that ComEd is obligated to offer a particular type of electric service, notwithstanding the Commission's authority to reject or modify rates and tariffs and to establish just and reasonable rates and tariffs under the Act. (220 ILCS 5/9-101, 9-102, and 9-201(c)). ComEd on the other hand, is not made to show that it is required by statute to acquire power and energy pursuant to a particular procurement methodology.

ComEd has identified no specific provision of the Act that requires ComEd to adopt, or the Commission to approve, a declining clock vertical tranche auction. ComEd has argued that it has submitted, for prior review and approval, a mechanism by which it will make wholesale power purchases. (ComEd Init. Br. at 16). In fact, ComEd argues that FERC has exclusive jurisdiction over the sale of electricity at wholesale in interstate commerce. (ComEd Init. Br. at 25). ComEd argues that FERC alone is empowered to make a judgment of the reasonableness of wholesale power purchases. (ComEd Init. Br. at 25).

If customers are obligated to show that ComEd is required to provide a particular service, in order to obtain that service, then in fairness ComEd should be obligated to show it is required to purchase power using the particular mechanism it requests the Commission approve here. However, the Act does not require either of these showings.

ComEd is obligated to show its proposed tariffs are just and reasonable under Article IX of the Act and the Commission is obligated to determine if ComEd's rates are just and reasonable under Article IX. The Commission is authorized to establish just and reasonable rates under Article IX. To the extent it concludes Rider CPP is not just and reasonable because over 3 MW customers

are not included in the CPP-A auction, it may include over 3 MW customers in the CPP-A auction as a remedial tariff modification under Section 9-201(c) of the Act. (220 5/9-201(c)). The record here establishes that Rider CPP is not just and reasonable because it does not include over 3 MW customers in the CPP-A auction. The Proposed Order should be modified to require ComEd to include those customers in the CPP-A auction.

Second, the reasoning of the Proposed Order is deficient in accepting ComEd's position that the Commission cannot require ComEd to provide such service because ". . . the over 3 MW customer class has been declared competitive." (PO at 125). This is simply not the case.

ComEd specifically sought to have Rate 6L service as provided to over 3 MW customers declared competitive. The Commission order that failed to approve ComEd's petition to declare Rate 6L service competitive describes the ComEd petition as the:

Commonwealth Edison Company Petition for declaration of service provided under Rate 6L to 3 MW and greater customers as a competitive service pursuant to Section 16-113 of the Public Utilities Act and approval of related tariff amendments. (Emphasis added) (See caption Interim Order, November 14, 2002, ICC Dkt. No. 02-0479, 2002 IL PUC Lexis 1088).³

Therefore, it was the service provided under Rate 6L which was allowed to become competitive. The over 3 MW customer group was not declared competitive.

In addition, the section of the Act under which ComEd filed its petition, Section 16-113, specifically provides:

An electric utility may, by petition, request the Commission to declare a tariffed service provided by the electric utility to be a competitive service. (220 ILCS 5/16-113(a)).

³ComEd's petition took effect by operation of law, not by Commission Order.

The statute does not permit a customer group to be declared competitive, only a particular service.⁴

Thus, it is not appropriate for the Commission to conclude that because ComEd's over 3 MW customers have been declared "competitive", it is prohibited from requiring ComEd to include over 3 MW customers in the CPP-A auction. Clearly it was only Rate 6L service which became competitive by operation of law. Over 3 MW customers were not declared competitive. (IIEC and DOE have not requested the reinstatement of Rate 6L service in this proceeding.)

The service offered to the customers included in the CPP-A auction is significantly different from Rate 6L service. It is a one-year product with a price subject to automatic change each year. It is not a bundled service, but a commodity supply option that is used in conjunction with unbundled delivery service. The price of the CPP-A product is a market based price, not a price based on the cost of production. Rather than continuous availability there is only a brief sign-up period each year for the CPP-A product. Finally, the product does not have a cap on the maximum charge per kWh that a customer can be charged. (Stephens Dir. IIEC Ex. 1 at 12:265-281). Therefore, the Commission would not be requiring ComEd to provide the service that became competitive by operation of law, if it required ComEd to include over 3 MW customers in the CPP-A auction.

Third, the Proposed Order recommends the Commission conclude that ComEd has presented evidence that customers over 3 MW should be excluded from the CPP-A auction and offered service under the hourly market. This language ignores the record evidence, some of it

⁴The Commission is permitted to declare a service competitive for a subset of customers. (220 ILCS 5/16-113(a)).

presented by ComEd witnesses, which actually supports offering a one-year fixed price product to over 3 MW customers.

ComEd witnesses testified that ComEd believes its one-year fixed price contract for CPP-A supply represents an appropriate balance between providing price stability and sending adequate price signals to promote the development of a competitive retail and wholesale market. (McNeil Reb. ComEd Ex.10.0 at 52:1118-1121). ComEd's expert witness stated in discovery that the offering of this type of product would actually promote efficient retail competition. (*See* Stephens Reb. IIEC Ex. 4 at 8:187-194 citing to a data response of ComEd witness Dr. LaCasse.)⁵ Thus, including over 3 MW customers in the CPP-A auction would encourage efficient competition, not harm it.

Mr. Frank Clark, President of ComEd, testified that as a wires only company, ComEd should be indifferent to offering a fixed price auction product to customers. (Clark Tr. 192-193). The record shows that ComEd would fully recover the auction and supply costs associated with providing over 3 MW customers a fixed price product. (Stephens Dir. IIEC Ex. 1 at 14:310-313). Indeed, Mr. Clark and IIEC witness Mr. Stephens agreed that ComEd would potentially gain more revenue from delivery service if it were to offer such a product to over 3 MW customers. (Clark Tr. 195-196; Stephens Dir. IIEC Ex. 1 at 14:314-318). Naturally, greater delivery service revenue from the affected customers has the potential to not only benefit ComEd, but its remaining delivery service customers as well.

⁵The record also shows that ComEd claims the market is already highly competitive for the over 3 MW customer group. (*See* IIEC Init. Br. At 42-43).

The proposed conclusion also overlooks evidence in the record which demonstrates that over 3 MW customers want price stability just as much as other customers. There is evidence that only nine customers have voluntarily elected to take the hourly service currently offered by ComEd.⁶ Only three over 3 MW customers are taking hourly service. (See Stephens Reb. IIEC Ex. 4, Sch. 1). This demonstrates that the hourly only product is neither adequate nor sufficient from the point of view of customers and that they want and need price stability.

The Proposed Order also ignores the fact that not one end-use customer representative in this case has recommended or supported the exclusive use of an hourly product. Staff does not recommend or support the use of only an hourly product for over 3 MW customers. Only Alternative Retail Electric Suppliers, entities which stand to benefit from making service from ComEd as unattractive as possible, support the offering of only an hourly product.

Therefore, the record shows that ComEd should be indifferent to offering a fixed price product to customers. The record shows that the offering of such a product will not harm the development of a competitive market. The record shows ComEd will be fully able to recover the cost of providing such a product. The record shows that ComEd delivery service revenues will potentially increase to the benefit of ComEd and its remaining customers. The record shows that an hourly product is so unattractive to customers that only nine customers out of thousands of eligible customers, have voluntarily elected to take such service. The record shows that offering such service to over 3 MW customers and creating a separate auction segment for those customers also

⁶Sixty-three customers are now on hourly service, but fifty-four of those customers are not taking the hourly service voluntarily. (Stephens Reb. IIEC Ex. 4, Sch. 1). (63 - 54 = 9).

will improve the practicality of allowing auction bidders to switch between ComEd and Ameren products. (*See* Section V.G.3. above).

This record evidence cannot, and should not, be ignored. As the Proposed Order notes elsewhere: “. . . it is appropriate to provide customers the type of utility service they desire so long as ComEd is allowed to recover the costs it incurs in providing that service.” (PO at 208). The Commission has the Article IX authority to require ComEd to include over 3 MW customers in the CPP-A auction. The Commission should direct ComEd to include over 3 MW customers in the CPP-A auction and provide customers with the utility service they desire. In the alternative, the Commission should make the inclusion of these customers a condition of its approval of the auction.

b. IIEC recommended a separate auction segment for over 3 MW customers. (*See* IIEC Init. Br. at 45-47). Specifically, IIEC suggested three reasons for a separate auction segment for the over 3 MW customers (assuming that over 3 MW customers are offered a one-year fixed price product). First, establishment of a separate auction segment would promote uniformity between ComEd and Ameren auction products. Second, a separate auction segment would recognize the fact that load characteristics of the customers in the over 3 MW group may be significantly different from those of customers in the 400 kW to 3 MW range. Third, creation of a separate auction segment for these customers would help minimize the risk of cross-subsidization due to the significant difference in load risk for the over 3 MW customers. IIEC specifically recommended that the auction for the over 3 MW customers could be done at the same time as the other CPP auction segments. For these reasons, and the reasons identified in Section V.G.3. above and in IIEC’s Initial Brief, IIEC recommends the Proposed Order be modified to require not only that

ComEd include over 3 MW customers in the CPP-A auction, but also that it establish a separate auction segment for those customers.

c. IIEC also recommended a multi-year product for CPP-A customers. IIEC addressed this issue in its Initial Brief. (IIEC Init. Br. at 47-48). IIEC argued that larger customers required such a product in order to moderate price volatility. The offering of such a product would provide benefits to customers and would also benefit the potential bidders who would have greater load revenue certainty. As with the annual service, ComEd would be able to pass through all supply costs associated with the product. (Stephens Dir. IIEC Ex. 1 at 25:550-552).

d. Finally, IIEC recommended that prequalification of large loads would enhance auction efficiency. (IIEC Init. Br. at 48-50). To the extent over 3 MW customers are entitled to participate in the CPP-A auction and/or the CPP-B auction, prequalification of their loads is recommended by IIEC to help minimize the load risk associated with serving such customers and hence, minimize the price of electricity used to serve those customers. Such a procedure would not place undue administrative burdens on ComEd or its customers. ComEd's President, Mr. Clark, assured the Commission that ComEd would do the best it can to participate in a power procurement process that would keep the cost of electricity as low as it possibly could. (See ComEd Init. Br. at 71; Clark Tr. 114). Taking ComEd at its word, ComEd should be supportive of this proposal, assuming over 3 MW customers are included in the CPP-A auction. For these reasons and the other reasons identified in IIEC's Initial Brief, IIEC's proposal for prequalification of large loads should be adopted and the Proposed Order modified accordingly.

IIEC recommends the Commission conclusion in Section V.I.3.f. at page 125 of the Proposed Order be modified to require ComEd to include over 3 MW customers in the CPP-A auction and to read as follows:

f. Commission Conclusion

ComEd has proposed to exclude customers with over 3 MW of demand from the CPP-A auction and to provide hourly market service to those customers. HEC and DOE have proposed to instead include such customers in the CPP-A auction. IIEC, Staff, BOMA, and DOE have agreed that these customers should be included in the CPP-A auction. However, HEC and DOE have not shown that ComEd is required to provide such a product to those customers. It appears that because the over 3 MW customer class has been declared competitive, the Commission cannot require ComEd to provide such service. ComEd has presented evidence that customers over 3 MW should be excluded from the CPP-A auction and offered service under the hourly market. The Commission adopts ComEd's proposal to offer hourly service to customers having over 3 MW of demand. ComEd has argued that it cannot be required to provide such service to the over 3 MW customer group because those customers have been declared competitive. The Commission disagrees with ComEd's position. It was Rate 6L service that was allowed to become competitive by operation of law, not a particular customer class. None of the parties to this proceeding have requested that the 6L service be reinstated. 6L service is substantially different from the CPP-A auction product. Therefore, by requiring ComEd to include these customers in the CPP-A auction, the Commission does not believe that it is requiring ComEd to provide the Rate 6L service that became competitive by operation of law under Section 16-113 of the Act. The Commission believes that under these circumstances it has the authority, in the context of determining if Rider CPP is just and reasonable, to require ComEd to include over 3 MW customers in the CPP-A auction.

ComEd also argues it has presented evidence that customers over 3 MW should be excluded from the CPP-A auction. However, the record is virtually devoid of such evidence and the evidence that is provided not persuasive to the Commission.

The record shows that providing a one-year fixed price product to end-use customers in the ComEd service territory will not adversely

affect the development of a competitive market. The Commission also notes that every large customer group in this case has requested the one-year fixed price option. Staff supports such an offering. Under the circumstances, the Commission believes it would be inappropriate to exclude the over 3 MW customers from the CPP-A auction.

The record here establishes a need for over 3 MW customers to be included in the CPP-A auction. No customer group has supported the provision of only hourly service. Staff supports including these customers in the CPP-A auction. Only those parties which directly benefit or have affiliates which directly benefit from their exclusion are opposed to the inclusion of those customers within the CPP-A auction. ComEd will recover the cost associated with the inclusion of these customers in the auction. The inclusion of these customers in the auction has the potential to benefit ComEd and other customers. ComEd as a wires only company should be indifferent to inclusion of these customers in the CPP-A auction.

The Commission recognizes there are benefits associated with including the over 3 MW customers in the CPP-A auction and doing so as a separate customer segment. The Commission agrees with IIEC that this will help facilitate the ability of potential bidders to switch between the ComEd and Ameren products by creating greater similarity between those products. This would benefit end-use customers.

Thus, the Commission will require ComEd to include the over 3 MW customers in the CPP-A auction as a separate customer segment. In establishing such a segment, the Commission also adopts IIEC's recommendation for prequalification of over 3 MW load which will help to reduce the cost of electricity for those customers and is consistent with ComEd's stated goal to minimize the electricity cost of customers.

If the Commission concludes it will not “require” ComEd to include the over 3 MW customers in the CPP-A auction, the Commission should make their inclusion a condition of the auction approval and adopt the following alternative language:

f. Commission Conclusion

~~ComEd has proposed to exclude customers with over 3 MW of demand from the CPP-A auction and to provide hourly market service to those customers. HEC and DOE have proposed to instead include such customers in the CPP-A auction. IIEC, Staff, BOMA, and DOE have agreed that these customers should be included in the CPP-A auction. However, HEC and DOE have not shown that ComEd is required to provide such a product to those customers. It appears that because the over 3 MW customer class has been declared competitive, the Commission cannot require ComEd to provide such service. ComEd has presented evidence that customers over 3 MW should be excluded from the CPP-A auction and offered service under the hourly market. The Commission adopts ComEd's proposal to offer hourly service to customers having over 3 MW of demand. ComEd has requested that the Commission take the extraordinary step of approving a particular methodology for the acquisition of its supply of power and energy to serve customers after January 1, 2007. Elsewhere in this Order, the Commission has essentially approved the ComEd proposal for a declining clock vertical tranche auction. In approving that proposal, the Commission has required ComEd to make certain modifications to the auction proposal as a condition of its approval. For example, at the request of ARES the Commission has included 400 kW to 1 MW customers in the CPP-A auction. The Commission is not required to approve a particular power procurement methodology for ComEd. ComEd is essentially free to implement any power procurement methodology it wishes to on a going-forward basis. Nor does the Commission believe it is specifically required to approve a power procurement methodology for ComEd in advance. ComEd seeks the Commission's advance approval of its power procurement methodology in order to minimize the risk that its power procurement costs would be disallowed as a result of prudence reviews. The Commission believes that given the extraordinary circumstance, as part of the process of approving ComEd's power procurement methodology in advance, it is entitled to order that ComEd modify portions of its proposal and to impose certain conditions on any approval granted. The Commission has required changes that are needed to make the proposed process just and reasonable. If ComEd does not agree with a particular modification or condition, it is free to implement its procurement strategy without the prior approval of the Commission.~~

The record here establishes a need for over 3 MW customers to be included in the CPP-A auction. No customer group has supported an

hourly only service. Staff supports including these customers in the CPP-A auction. Only those parties which directly benefit or have affiliates which directly benefit from their exclusion are opposed to the inclusion of those customers within the CPP-A auction. ComEd will recover the cost associated with the inclusion of these customers in the auction. The inclusion of these customers in the auction has the potential to benefit ComEd and other customers. ComEd as a wires only company should be indifferent to inclusion of these customers in the CPP-A auction.

Therefore, under the circumstances the Commission conditions its approval of the ComEd declining clock vertical tranche auction on the inclusion of over 3 MW customers in the CPP-A auction, which the Commission regards as a change needed to make the proposal just and reasonable.

In addition, the Commission agrees with IIEC that a separate auction segment should be established for over 3 MW customers. In establishing such a segment, the Commission also adopts IIEC's recommendation for prequalification of over 3 MW load which will help to reduce the cost of electricity for those customers and is consistent with ComEd's stated goal to minimize customer's electricity costs.

4. Demand Charge Component for ≥ 1 MW Customers

IIEC recommended that a demand charge component be included in the rate structure for customers subject to the CPP-A auction segment. IIEC addressed this issue in its Initial and Reply Briefs. (IIEC Init. Br. at 50-51; IIEC R. Br. at 29-31). IIEC presented evidence that the energy only price contemplated by ComEd does not fully recognize the benefits of load factor in overall customer costs. (Stephens Dir. IIEC Ex. 1 at 23:503-504).

IIEC presented evidence that the energy price resulting from the CPP-A auction could be modified to isolate a capacity component, which would be charged on a per kW basis, with the remainder of the auction price to be charged on an energy basis. The capacity charge would not be an adder to the auction price. (Stephens Dir. IIEC Ex. 1 at 23:504-508). IIEC also presented

evidence that the proxy for the capacity value reflected in the per kW charge should be the capacity price developed for use with the hourly priced product associated with the CPP-H capacity auction. In the alternative if a PJM capacity market value is used for the CPP-H product then that capacity value should be used as the proxy for the demand charge component for customers over 1 MW. IIEC reasoned that the subject capacity values would be readily available and provided the most straightforward approach for use in developing the demand charge component for the ultimate customer prices. (Stephens Dir. IIEC Ex. 1 at 23:513-519). No party opposed this very specific IIEC recommendation. No party presented testimony challenging IIEC's recommendation or suggesting it lacks sufficient detail to be implemented.

In spite of these facts, the Proposed Order recommends that IIEC's proposal be rejected because IIEC did not provide the details of the proposal and because no other party supported IIEC's proposal. IIEC respectfully disagrees.

First, the recommended conclusion is based on language ComEd included in its draft order and on arguments that ComEd did not make until it submitted its Reply Brief to the Commission. Thus ComEd, which did not file any testimony in response to IIEC's proposal and did not object to the proposal in its Initial Brief, did not speak on the issue until the opportunity for IIEC to reply to ComEd's criticism had passed.

With regard to the details of the proposal, the details were clearly provided in the testimony offered by IIEC witness Mr. Stephens as discussed above. Thus, it is simply incorrect to suggest that IIEC did not provide the details of its proposal. It did so in testimony, and it did so again in its Initial Brief. (*See* IIEC Init. Br. at 50). ComEd, on the other hand, did not present or point to a single piece of evidence to support its claim that IIEC did not provide the details of its proposal.

Neither did ComEd insert any evidence in the record to suggest how or why the detail that IIEC did provide was insufficient.

Furthermore, the suggestion that IIEC's recommendation should be rejected because other parties have failed to affirmatively support it, is disconcerting. First, IIEC gained the support of essentially every other customer group for its proposal to offer a one-year fixed price product for over 3 MW customers. However, IIEC's recommendation was not adopted in the Proposed Order. Now, apparently, in order to have its recommendation on a demand charge for over 1 MW customers adopted, IIEC must secure the support of at least one other party. The Commission needs to impose a consistent standard. It cannot and should not assume that because other parties did not voice support for IIEC's proposal, they are in opposition to that proposal. Indeed, one could just as fairly infer from the failure of other parties, to oppose IIEC's proposal they had no objection to the proposal. Otherwise, they would have stated their objections.

Because IIEC presented the details of its proposal in the record in this proceeding and because no party presented evidence in opposition to IIEC's proposal, and the only party objecting to the proposal did so in a fashion that prevented any challenge to its opposition, the Commission should modify the Proposed Order to adopt IIEC's recommendation. The tariffs approved in the case, including Rider CPP do not take effect until January 1, 2007. ComEd has plenty of time to make an appropriate tariff filing reflecting IIEC's proposal.

Therefore, IIEC recommends the modification of the Proposed Order, by deleting the "Conclusion" for Section V.I.4. at page 112 and substituting a new conclusion to read as follows:

c. Commission Conclusion

IIEC recommended the isolation of a demand charge component for customers subject to the CPP-A auction. IIEC provided unrebutted

testimony that ComEd's use of an energy only price would not fully recognize the benefits of load factor in the overall customer cost. IIEC proposed that the energy price resulting from the CPP-A auction be modified to isolate the capacity component, which would then be charged on a per kW basis, with the remainder of the auction price to be charged on an energy basis. The capacity charge would not be an adder to the auction price. The capacity value developed from ComEd's method for acquiring capacity for the Rider CPP-H product would be used as a proxy for the per kW charge.

Therefore, the Commission accepts IIEC's recommendation. It directs ComEd to make an appropriate tariff filing within 60 days of the issuance of this order. The Commission notes that the rates approved herein are not to take effect until January 2, 2007. There is sufficient time for ComEd to prepare and file a modified tariff incorporating IIEC's proposal.

VII. Tariff and Rate Design Issues

A. Rider CPP

13. Alternative Proposals re: Service to Self-Generation Customers

The Proposed Order rejects IIEC's demand for a per kW-day demand charge structure for self-generation customers. (PO at 205). The IIEC proposal complies with FERC regulations for capacity charges to Qualifying Facilities, which are included in ComEd's self-generation customer class. Specifically the Proposed Order "... rejects IIEC's proposal to bill self-generating customers on a per kW-day basis on those days energy is actually taken from ComEd." (*Id.*) FERC regulations require that rates for those self-generation customers take into account the low probability of simultaneous outages of such facilities and of their ability to coordinate maintenance outages. (18 CFR §295.305(c)).

The Proposed Order justifies its approval of ComEd's proposal by asserting that "the record shows" that IIEC's proposal would result in charges unrelated to the relevant costs and result in

movement away from the imposition of costs on cost-causers. (PO at 205). In fact, ComEd has not made the showing the Proposed Order cites as support for its conclusion. Moreover, ComEd has not shown its proposal for billing demand charges to self-generation customers conforms to 18 CFR §295.305(c). (IIEC Init. Br. at 68-69; IIEC R. Br. at 40-42). Moreover, IIEC's proposal is not a departure from a rate structure under which cost causers bear those costs and it is consistent with 18 CFR §295.305(c). (IIEC R. Br. at 42).

The conclusion of Section VII.A.13 at page 205 of the Proposed Order should be modified as shown below:

c. Commission Analysis and Conclusions

In accordance with this Commission's consistent policy of assigning costs to cost-causers when practicable, the Commission adopts ~~rejects~~ IIEC's proposal to bill self-generating customers on a per kW-day basis on those days energy is actually taken from ComEd. The change will avoid having customers pay for capacity when they are placing no demand on the system and, therefore, not causing ComEd to incur capacity costs. The change also serves to make the charge structure consistent with the requirements of FERC regulations applicable to qualifying facilities which ComEd has incorporated in its self-generation customer class. The record shows, contrary to HEC's arguments, that this proposal would result in charges that bear no relationship to costs imposed on the system. HEC's proposal for a translation process must be rejected for similar reasons; it would result in movement away from a system under which those who impose costs on the system bear those costs. ComEd's IIEC's proposal is reasonable and is hereby adopted.

In the alternative, if the Commission chooses not to require ComEd to adopt a per kW-day basis for demand charges, the Commission, should at a minimum, require ComEd to conform its demand charge structure to 18 CFR §295.305(c). This would be done by adjusting self-generating customer charges through its rate translation process. The adjusted charges should reflect the low likelihood that all such customers will experience generator outages at the same time, at the time of

system peak, or both, and their ability to commit to performing generation maintenance during off-peak periods of the year. (IIEC Init. Br. at 69 and 71).

If the Commission adopts this alternative remedy, the conclusion of Section VII.A.13 at page 205 of the Proposed Order should be modified as shown below:

c. Commission Analysis and Conclusions

Because of the variance noted by ComEd between IIEC's remedial proposal and suppliers' anticipated obligations under PJM's capacity requirements and ComEd's responsibilities under the Supplier Forward Contracts, the Commission rejects IIEC's proposal to bill self-generating customers on a per kW-day basis on those days energy is actually taken from ComEd. However, this Commission's policy of assigning costs to cost-causers when practicable requires a remedial change to avoid having customers pay for capacity when they are placing no demand on the system and, therefore, not causing ComEd to incur capacity costs. Accordingly, The record shows, contrary to IIEC's arguments, that this proposal would result in charges that bear no relationship to costs imposed on the system. IIEC's proposal for a translation process will be adopted. must be rejected for similar reasons; it would result in movement away from a system under which those who impose costs on the system bear those costs. ComEd's ComEd will adjust self-generating customer capacity charges through a rate translation process to reflect the low likelihood that all such customers will experience generation outages at the same time, at the time of system peak, or both. In addition to comply with applicable FERC regulations, ComEd's modified charges will take account of the ability of such customers to perform generation maintenance during off-peak periods of the year, when incremental generation is not required to serve their loads. IIEC's proposal is reasonable and is hereby adopted.

14. Alternative Proposals re: Interruptible Service (ALM and Non-ALM Demand Response)

The Proposed Order correctly concludes that the IIEC proposal for CPP-H (hourly pricing) customers to participate in the PJM ALM program should be adopted. However, the Proposed Order does not address the substantive merit of IIEC's proposal for having over 3 MW fixed price

customers participate in PJM's emergency and economic (non-ALM) load management programs. The Proposed Order accurately recounts the reasons IIEC's proposal is needed. (PO at 207). But the Proposed Order ultimately rejects IIEC's proposal -- solely "because customers with demand of 3 MW and higher will not be taking fixed price bundled service from ComEd."⁷ (PO at 208).

In testimony and briefs, IIEC explained that an ability to participate directly in PJM's emergency and economic load management programs is critical for mitigating very high market prices to customers, and for maintaining system supply when supply adequacy is tight. No party contested the substance of IIEC's proposal. (ComEd R. Br. at 135). ComEd contends that its current Rider VLR is an adequate opportunity for load management. Moreover, ComEd says, since it will not offer a fixed price service to over 3 MW customers (because it believes it does not have to), the issue is moot. (PO at 208). The Commission should reject both of ComEd's positions.

First, ComEd's current Rider VLR does not make IIEC's proposal moot. Contrary to ComEd arguments, Rider VLR does not provide for participation in PJM's economic response program. That interruptible service option is absent from the list of load response programs permitted under the tariff. (Dauphinais Dir. IIEC Ex. 2, Sch. 2 (Rider VLR)). Indeed, ComEd confirms that limitation on "the opportunity to participate in the PJM emergency load program." (ComEd R. Br. at 135).

Second, in Section V.I.3. of this Brief, IIEC recommends the over 3 MW customers should be included in the CPP-A auction. The Proposed Order should address the merits of the IIEC proposal so that effective load management is available for over 3 MW customers if the Commission accepts IIEC's recommendation.

⁷The Proposed Order denies over 3 MW customers a fixed price service in its Section V.I.3.

The Commission should modify its approval of the IIEC proposal to require that ComEd offer over 3 MW customers the opportunity to participate directly in the PJM emergency load response program and the PJM economic response program, through PJM members or a PJM Curtailment Service Provider. (IIEC Init. Br. at 75-76).

The last paragraph of the conclusion in the Proposed Order's Section VII.A.14.c. at page 208 should be modified as shown below:

c. Commission Analysis and Conclusions

* * * *

IIEC's second proposal is for customers with demand of 3 MW and higher, taking fixed price bundled service to be allowed to participate directly in load response and economic ~~load~~ load response programs through PJM members or a PJM Curtailment Service Provider. As the Commission has recently affirmed, customer participation in load response programs is a desirable public policy objective. However, to gain the full benefits of load response programs, customers not directly exposed to locational marginal prices must have an incentive to participate. ComEd's Rider VLR does not permit such economic incentives to operate. The IIEC proposal is a reasonable way to enable effective operation of such programs and to maintain the Commission's policy priorities. The IIEC proposal is therefore adopted, and ComEd is ordered to modify its tariffs to permit direct participation in PJM's emergency and economic load response programs through PJM members or a PJM Curtailment Service Provider. The Commission rejects IIEC's proposal because customers with demand of 3 MW and higher will not be taking fixed-price bundled service from ComEd.

Miscellaneous

There are two erroneous references to "Ameren territory" in Section IV.C.4. at page 59 of the Proposed Order. These should be changed to "ComEd territory".

Conclusion

The Proposed Order should be modified in accordance with the recommendations made by IIEC herein.

DATED this 19th day of December, 2005.

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