

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>CENTRAL ILLINOIS LIGHT COMPANY</b>	:	
<b>d/b/a AmerenCILCO, CENTRAL ILLINOIS</b>	:	
<b>PUBLIC SERVICE COMPANY d/b/a</b>	:	
<b>AmerenCIPS, and ILLINOIS POWER</b>	:	
<b>COMPANY d/b/a AmerenIP</b>	:	
<b>Petitioners</b>	:	<b>ICC Docket No. 05-0160,</b>
	:	<b>05-0161, 05-0162 (consol.)</b>
	:	
<b>Proposals to implement a competitive</b>	:	
<b>procurement process establishing Rider</b>	:	
<b>BGS, Rider BGS-L, Rider RTP, Rider RTP-</b>	:	
<b>L, Rider D, and Rider MV.</b>	:	

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**REPLY BRIEF ON EXCEPTIONS OF THE  
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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Now comes the Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned attorneys, and pursuant to Section 200.830 of the Commission's Rules of Practice, 83 Ill. Adm. Code Section 200.830, respectfully submits this Reply Brief on Exceptions to the briefs on exceptions filed by Central Illinois Light Company d/b/a AmerenCILCO ("AmerenCILCO"), Central Illinois Public Service Company d/b/a AmerenCIPS ("AmerenCIPS") and Illinois Power Company d/b/a AmerenIP ("AmerenIP") (collectively the "Ameren Companies" or "Ameren") ("Ameren BOE"), the People of the State of Illinois ("AG BOE"), Constellation NewEnergy, Inc., Direct Energy Services, LLC, MidAmerican Energy Company, Peoples Energy Services Corporation, and U.S. Energy Savings Corp. (collectively, the "Coalition of Energy Suppliers" or "CES") ("CES BOE"), the Citizens Utilities Board ("CUB BOE"), Direct Energy Services, LLC ("DES") and U.S. Energy Savings Corp. ("USESC") ("DES-

USESC BOE”), Dynegy Inc. (“Dynegy BOE”), Illinois Industrial Energy Consumers (“IIEC BOE”) and Midwest Generation EME, LLC (“MWGen BOE”) in response to the Proposed Order issued by the Administrative Law Judge (“ALJ”) on December 9, 2005 (“Proposed Order” or “PO”).

## **I. INTRODUCTION**

In general, the parties’ Briefs on Exceptions raise issues or arguments previously presented in their Initial and Reply Briefs. Staff previously responded to these arguments in its Initial and Reply Briefs, and will not repeat those arguments here. Thus, the absence of a specific response indicates that Staff continues to advocate and rely on the positions and arguments advanced in its Initial Brief (“Staff IB”), Reply Brief (“Staff RB”) and Brief on Exceptions (“Staff BOE”). Some arguments advanced in the parties’ Briefs on Exceptions raise new matters or otherwise merit an additional response, and Staff’s responses to those arguments are set forth below.

## **II. ARGUMENT**

### **A. Post Hoc Prudence Reviews (Sections III.E.3, III.E.5 & V.K.2 of the PO)**

#### Response to Ameren

The Ameren Companies disagree with the Proposed Order’s conclusions calling for an after-the-fact prudence review of auction-based electricity purchases. (See Ameren BOE, pp. 19-22) Although Staff did not take exception to the Proposed Order’s proposal for after-the-fact prudence reviews subject to a presumption of prudence, Staff also confirmed that it continues to believe that it would be appropriate for the

Commission to make a prudence finding in this proceeding for auction-based purchases of electricity as well as certain contingency purchases of electricity. (Staff BOE, pp. 2-16) Consistent with Staff's previously stated position, Staff does not oppose the Ameren Companies proposed exception to eliminate the Proposed Order's after-the-fact prudence review provisions.

Although Staff did not take exception to the Proposed Order's general proposal for after-the-fact prudence reviews subject to a presumption of prudence, Staff did propose that the language of the Proposed Order be modified to clarify the Commission's intent and findings. (*Id.*) Staff continues to recommend that the Commission adopt Staff's clarifying language in the event the Commission maintains the annual prudence reviews called for by the Proposed Order.

## **B. Post-2006 Initiative (Section III.F of the PO)**

### Response to AG

The AG continues to argue that the use of the reports resulting from the Post-2006 Initiative in this proceeding violates the Commission's promise that the process would not be used in subsequent litigation. (AG BOE, pp. 9-15) In support of its argument, the AG cites the Commission's promise that in order to facilitate free and open discussions, statements made, positions taken, and documents and papers provided by the stakeholders in the Post 2006 Initiative Process will not be used by the stakeholders in any subsequent litigation. (AG BOE, p. 10) The AG concludes that "[t]he Commission is estopped from relying on or citing the Post 2006 Initiative reports and discussions in the Order in this docket." (*Id.*) The AG further claims that "the use of

the Post-2006 Initiative process to build the appearance of momentum and consensus violates the Commission's promise ...". (*Id.*)

The arguments set forth by the AG must be rejected. The PO correctly concludes

Parties who disagreed with the thrust of or characterizations in the references to the Post-2006 process or results thereof were given a full opportunity to express their views in this docket, as they were in the Post-2006 Initiative itself, and their comments have been duly considered.

(PO, p. 82) The PO's conclusions are supported by Section II the Post-2006 Initiative: Final Staff Report to the Commission ("Final Staff Report"), which states

... the working groups were charged with reaching consensus positions on the various issues. Common ground was found on numerous issues, and identification of common ground is an important first step towards preparing for the Post 2006 era. However, where consensus was not reached on substantive issues, action is still required. ... This report does not attempt to exhaustively address all the discussions of the working groups, but Staff makes recommendations in each of the main issue area.

(Final Staff Report, p. 2) The Final Staff Report sets forth Staff's recommendations based upon reports from the Working Groups. Experienced, knowledgeable professionals in the regulatory field, representing the public and private sectors, contributed great time and effort in the Working Groups so that Staff could formulate the report and provide guidance to the Commission. To put it and the related reports aside would do a great disservice to the Commission, these professionals and Illinois ratepayers. As noted by the PO, "... the Post-2006 Initiative was an innovative and inclusive process that provided a valuable opportunity to a broad range of participants to explore and develop alternatives on the critical issues relating to Post-2006 electric supply acquisition." (PO, p. 82) Further, the Post-2006 reports did not prohibit parties in this proceeding from arguing against its recommendations or challenging any

consensus items. In fact, the Final Staff Report acknowledges that “this report does not attempt to exhaustively address all the discussions of the working groups ....”

Thus, the Commission should reject the arguments and language set forth by the AG with respect to the Post-2006 Initiative reports and conclusions (Section III.F of the PO).

**C. Proposed Blends for Residential and Small Commercial Customer Supply (Section V.H.1 of Proposed Order)**

Response to DES/USESC

DES/USEC recommends that the Commission drastically revise Ameren’s annual auction proposal. DES/USEC would have Ameren hold multi-year auctions (monthly or quarterly) for smaller-use customers and require Ameren to only offer hourly pricing to customers with a demand greater than one megawatt (DES/USEC BOE, Appendix B) These proposals were not supported by any customer group and were properly rejected by the PO. It is clear that customers currently prefer the price stability offered by the Ameren proposal over potentially volatile wholesale rates. The Commission should not adopt the DES/USEC proposals.

**D. Joint and Several Liability (Section V.L.3 of the PO)**

Response to Ameren

In response to the Proposed Order’s adoption of Staff’s recommendation relating to the joint and several liability issue, the Ameren Companies alternatively propose “... that each Ameren utility be bound under a separate SFC.” (Ameren BOE, p. 7) The Ameren Companies believe that the separate SFC will eliminate the joint and several

liability concerns "... while accomplishing the same goals as intended by the Proposed Order and by Staff's recommendation." (*Id.*)

While it is Staff's primary recommendation that Ameren redraft the SFC as concluded by the PO (ICC Staff Exhibit 11.0 Corrected, pp. 20-21, lines 456-460; Staff IB, pp. 116-123; Staff RB, pp. 65-66), Staff does not object to the Ameren Companies' alternate proposal. As Staff witness Salant testified

If this is not possible [redrafting of the SFC], I would recommend that the Commission order each Ameren utility to have their own separate contract, ...

(*Id.*, p. 21, lines 460-462) Therefore, if desired by the Commission, Staff does not object to adoption of Ameren's alternate proposal that would create a separate SFC for each Ameren utility in lieu of redrafting the current SFC.

#### **E. Identification of Resources (Section V.L.6 of the PO)**

##### Response to Ameren

The Commission should reject the Ameren Companies proposed language with respect to the identification of capacity resources (Ameren BOE, p. 6). Staff previously responded to the Companies' arguments in its testimony (ICC Staff Exhibit 4.0 and ICC Staff Exhibit 19.0), Initial Brief (Staff IB, pp. 132-142) and Reply Brief (Staff RB, pp. 67-68), and will not repeat those arguments here. However, Staff would like to address several statements made by the Ameren Companies in its Brief on Exceptions.

First, the Ameren Companies state

The Ameren Companies, as the load serving entities, must be able to identify this amount of capacity to satisfy their statutory obligations and to provide essential resource adequacy information to MISO and to any reliability organization with whom they contract.

(Ameren BOE, p. 3) This is simply incorrect. There is no MISO-related reason why the Ameren Companies need this information. Ameren witness Blessing admits that BGS contracts are sufficient in MISO for the Ameren Companies to procure Network Integration Transmission Service (“NITS”), which is a process explained in Module B of the MISO Tariff. As a result, the Ameren Companies do not need capacity resource information from suppliers for NITS procurement purposes. (ICC Staff Exhibit 19.0., pp. 23-24, lines 498-522: Staff IB, p. p. 137)

Further, suppliers do not need to submit capacity resource information to Ameren in order to be eligible to nominate FTRs. They can submit this information directly to MISO as market participants and this is sufficient to make them eligible to nominate and receive FTRs during the MISO FTR allocation period. (ICC Staff Exhibit 19.0, pp. 24-25, lines 537-552, Staff IB, pp. 137-138) Therefore, since suppliers do not need to submit any capacity resource information to the Companies for the purpose of procuring NITS or to be able to nominate and receive FTRs in MISO, suppliers do not need to submit any capacity resource information to the Ameren Companies for any MISO-related purpose. (ICC Staff Exhibit 19.0, pp. 25-26, lines 553-665, Staff IB, p. 138)

Further, the Companies may be able to meet their MAIN (or other relevant regional reliability organization) requirements without obtaining capacity resource information from the suppliers provided that MAIN (or other relevant regional reliability organization) accepts such arrangements. (ICC Staff Exhibit 19.0, pp. 33-34, lines 727-747, Staff IB, p. 134 and 138-139)

Second, the Ameren Companies note that “... the record reflects that no supplier have has objected to these provisions.” (Ameren BOE, p. 5) Actually, the record is

silent; suppliers have neither objected to nor supported the Companies' provisions. Further, a party's silence with respect to a particular issue is not useful in determining the merits of that issue.

The reality remains that obligating suppliers to submit capacity resource information to the Ameren Companies may have adverse effects on auction participation. Some suppliers may consider such data as commercially sensitive, and thus may be hesitant to reveal the information to the Companies -- especially since the Companies' generation and marketing affiliates are competitors of the suppliers in the procurements auctions, bilateral energy and capacity markets, centralized day-ahead and real time RTO LMP markets and possibly others. In order to avoid disclosure of such sensitive data, some suppliers may choose not to participate in the auction resulting in a less competitive auction, higher prices for ratepayers and possibly volume cutbacks by the auction monitor due to insufficient participation. (ICC Staff Exhibit 19.0, pp. 28-29, lines 615-627, Staff IB, p. 133)

Thus, Ameren's proposed language relating to the identification of resources should be rejected.

**F. Customer Supply Group Migration Risk Factor (Section VII.B.6.a of the PO)**

Response to Coalition of Energy Suppliers

CES continues to press for adoption of a migration risk factor in its BOE. (CES BOE, pp. 15-20) In doing so, the CES presents again the arguments that Staff has previously refuted in this proceeding. (ICC Staff Exhibit 14.0, pp. 7-10; Staff IB, pp. 172-174; Staff RB, pp. 76-77)

The CES presents an unsubstantiated interpretation of the PO on this issue, stating:

The Proposed Order does not dispute that customer migration will result in additional costs to suppliers, but instead takes issue with the “divergence” of methodologies proposed for estimating the magnitude of those costs and a record that is “not sufficient” with regard to the issue.

(CES BOE, p. 16) This claim amounts to a liberal and unreasonable interpretation of the PO which discusses the issue of cost in quite limited terms:

In the Commission’s view, it seems logical that when developing bidding strategies and bid prices, suppliers will consider the likelihood and level of possible customer switching. However, there is not sufficient information in the evidentiary record to support the inclusion a specific migration risk factor at this time.

(PO, p. 210) The above passage provides no basis for the CES’ claim that the PO in some manner validates their claim that migration risk poses a significant cost for suppliers. The statement in the PO suggests that suppliers may consider possible customer switching strategies in their bids, but that does not mean the suppliers attribute a meaningful, substantial cost to this activity.

Furthermore, the CES fails to grasp the meaning of the PO’s concern about the “divergence of opinions regarding the anticipated level of customer switching”. (PO, p. 210) This divergence exists because these costs are so ephemeral. If suppliers do consider possible switching in their bids, then issues arise concerning how much of a concern switching presents, what kind of costs result from this concern, and what the magnitude of those costs might be. The fact that no party was able to establish a reasonable estimation method calls into question whether this is a meaningful cost at all. Ironically, the foundation for the migration risk factor proposed by CES is the estimation method proposed by Commonwealth Edison Company (“ComEd”) in ICC

Docket 05-0159. CES never presented any testimony or accompanying evidence in this docket as to why the ComEd approach should be used for the Ameren prism. Furthermore, CES failed to provide sufficient support for its proposal in that if there are obstacles to switching in the Ameren's service territory, the record is devoid of evidence indicating that eliminating the obstacles would produce switching levels on par with ComEd. (ICC Staff Exhibit 14.0, pp. 9-10; Staff IB p. 173) This approach is an illogical stretch that the PO rightly rejected.

The second argument by CES is deeply flawed. It focuses not on the legitimacy of the costs, but rather on the end-result of applying a migration risk factor. The CES argues:

By rejecting the proposals to implement a migration risk factor, the Proposed Order recommends a step that would harm residential customers.

(CES BOE, p. 17) In other words, regardless of the merits from a cost standpoint, the Commission should approve the migration risk factor because it lowers residential costs relative to other customers.

This argument is deficient on two counts. First, the existence of a cost is not determined by who benefits and who is harmed by the imposition of that cost. If the concern is potential impacts, then there is no need to even look at the costs as they would be essentially irrelevant.

Second, it is not so clear that a migration risk factor would lower costs for residential customers. However, as Staff has explained, CES provides no meaningful evidence to demonstrate it is a meaningful cost for suppliers that should be factored in the equation. (ICC Staff Exhibit 14.0, pp. 8-9, lines 184-188; Staff RB, p. 76)

The CES concludes its discussion by complaining that “[t]he Proposed Order improperly discounts the evidence and experience that parties have brought to developing the record in this proceeding supporting of a migration risk factor”. (CES BOE, p. 19) That statement does not accurately reflect the record in the case which is that the evidence in favor of a migration risk factor has been found to be deeply flawed and poorly supported. As a result, the PO has no choice but to reject the proposal.

Finally, the CES seeks to buttress its argument by citing the “evidence” its witnesses provided concerning “the observed pattern of migration between PPO and RES [Retail Electric Supplier] service for most customer groups in the ComEd service territory” with commercial customers seeking the lowest cost option while residential customers have little inclination to switch. (CES BOE, p. 19)

This discussion by CES is confusing because the referenced arguments were presented in support of an alternative migration risk factor based on data presented in the ComEd proceeding. Furthermore, the claim that commercial customers are only concerned about the lowest price is unfounded. The decision to receive RES service is also about whether to rely on market forces, rather than regulation, to set the price and quality of the power received. In deciding to migrate to RES service, customers must have confidence that the market can meet their needs over the longer term. To argue that this decision is solely based on price oversimplifies a more complicated decision-making process. This argument offers no tangible support to the migration risk proposal offered by CES. Therefore, the Commission should not include an explicit migration risk factor and reject CES’s arguments and proposed language.

## **G. Supply Procurement Adjustment (Section VII.B.7 of the PO)**

### Response to Coalition of Energy Suppliers

The Commission should reject the replacement language proposed by the CES regarding the Supply Procurement Adjustment (“SPA”) (CES BOE, Appendix A, pp. 10-12). The PO is correct that the Ameren Companies’ next delivery services rate proceedings are a more appropriate forum in which to make the specific decisions regarding the SPA. (PO, p. 218)

Furthermore, the Commission should reject CES’ proposal to track the SPA through the Market Value Adjustment Factor (“MVAF”) (CES BOE, Appendix A, pp. 10-12). Tracking the SPA and supply-related uncollectible costs through the MVAF would not accomplish the stated goal of ensuring that the Ameren Companies neither over nor under-collects for these expenses. Staff explained in its testimony and initial brief how this approach would mismatch costs and recoveries from two different periods that reflect different levels of sales and costs. This kind of mismatch would not accomplish the kind of true-up of costs and recoveries that CES desires. (ICC Staff Exhibit 17.0, pp. 5-6, lines. 96-125; Staff IB, pp. 176-179) Staff also explained why the kind of true-up that CES seeks is not necessary, given that the SPA and adjustment for supply-related uncollectible costs will be set in a rate case. (ICC Staff Exhibit 17.0, p. 6, lines. 119-125; Staff IB, pp. 177-178)

### Response to Ameren

The Commission should reject the replacement language proposed by the Ameren Companies regarding the SPA (Ameren BOE, pp. 14-15). They continue to claim that failure to incorporate the true-up mechanism to track the SPA costs would “...

result in a greater possibility of under or over recovery by the Ameren Companies.” (Id., pp. 12-14)

The Companies’ argument is without merit. Once again, in order to achieve the kind of true up the Ameren Companies seek, one must reconcile costs incurred in a particular period with recoveries for that same period. Instead, Ameren’s true-up mechanism reconciles recoveries for the Determination Month with the absolute dollar amounts from the test year in the last rate case. Such a reconciliation results in a mismatch of costs and recoveries from two different periods, which would likely reflect different levels of sales and different levels of costs. As a result, this kind of mismatch would not accomplish the true-up of costs and recoveries that is desired. (ICC Staff Exhibit 17.0, p. 6, lines 108-118; Staff IB, p. 178)

Ameren’s true up mechanism would instead, isolate a single cost element and force recovery for that cost element to an unchanging, predetermined dollar amount regardless of the level of service provided or amount of cost actually incurred. (Resp. Ex. No. 23.0, pp. 3-5, lines 68-99) Staff has explained why such a procedure is both incorrect and unnecessary. (See above, also, ICC Staff Exhibit 17.0, pp. 5-6, lines 104-125; Staff IB, pp. 178-179; Staff RB, 77-80)

Finally, as noted by Staff in its Reply Brief, there are four reasons why the Ameren proposal must be rejected: (1) the proposal to track SPA costs through the MVAFF reflects novel ratemaking theory (Staff RB, p. 78); (2) the record is devoid of any factual support for the Ameren proposal (*Id.*); (3) the evidence presented by the Ameren Companies indicates that they do not expect the magnitude of the SPA to be significant (Resp. Ex. 23.0, pp. 6-7, lines 131-141; Tr., p. 227, lines 13-17) (*Id.*, p. 79); and (4) the

evidence demonstrates that tracking the SPA through the MVAF would not ensure that the Ameren Companies would neither over nor under recover the SPA costs (*Id.*, pp. 79-80). Therefore, Staff strongly recommends that the Commission reject the proposed language allowing the Ameren Companies to track the SPA and uncollectible adjustment through the MVAF.

#### **H. Rider D –Default Supply Service Availability Charge (Section VII.B.13 of the PO)**

##### Response to Ameren

Ameren continues to support its Rider D proposal. Under the Ameren proposal, customers with a demand exceeding one MW would pay a \$0.00015 cents/kWh charge for each kilowatt-hour they purchase from a Retail Electric Supplier. The Rider D revenue would be awarded to each successful bidder in the hourly auctions.

There are ample reasons to reject the proposal. First, large customers, who ostensibly could benefit from implementation of the proposal, do not support it. (Staff IB, p. 193) Second, as the PO points out, the charge is not cost-based (PO, p. 241) Third, there may be bidders in the hourly auction absent the proposal. (Staff IB, p. 193; IIEC IB, pp. 46-50) Fourth, if there are no bidders, hourly customers could be charged the cost of capacity that Ameren procures in the market on their behalf. (Staff RB, pp. 84-85)

### III. CONCLUSION

WHEREFORE, for all the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in this proceeding.

Respectfully submitted,

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