

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

REPLY BRIEF ON EXCEPTIONS
OF ILLINOIS INDUSTRIAL ENERGY CONSUMERS

Eric Robertson
Ryan Robertson
Lueders, Robertson & Konzen LLC
1939 Delmar Avenue
Granite City, IL 62040
618-876-8500
erobertson@lrklaw.com
ryrobertson@lrklaw.com

Conrad Reddick
Attorney at Law
1015 Crest Street
Wheaton, IL 60187
conradreddick@aol.com

December 30, 2005

INDEX

	<u>Page</u>
I. Response to Ameren -----	2
Rider D -----	2
II. Response to CES -----	5
A. Enrollment Window -----	5
B. Combination of BGS-FP and BGS-LFP Customers -----	8
C. Migration Risk Factor -----	11
III. Response to DES/USESC -----	13
IV. Conclusion -----	14

IIEC REPLY BRIEF ON EXCEPTIONS

The Illinois Industrial Energy Consumers (“IIEC”) will respond to certain positions and arguments made by: Central Illinois Light Company, d/b/a AmerenCILCO; Central Illinois Public Service Company, d/b/a AmerenCIPS; and Illinois Power Company, d/b/a AmerenIP (collectively, “Ameren” or “Ameren Companies”); the Coalition of Energy Suppliers (“CES”) and Direct Energy Services, L.L.C. and U.S. Energy Savings Corp. (“DES/USESC”), in their respective Briefs on Exceptions (“BOE”) to the Administrative Law Judge’s Proposed Order of December 9, 2005 (“Proposed Order” or “PO”). IIEC’s failure to address any specific argument or position of any party in this Reply Brief on Exceptions should not be taken as an endorsement or acceptance of that position unless otherwise expressly stated herein.

Specifically, IIEC will respond first to Ameren’s Exception 8: the Proposed Order’s failure to adopt Demand Supply Service Availability Charge - Rider D. (Ameren BOE at 17-19). IIEC will then respond to three exceptions of CES: (1) the CES exception to the Proposed Order’s failure to adopt a 50-day enrollment window for the first auction and a 45-day window thereafter (CES BOE at 4-11); (2) the CES exception to the Proposed Order’s rejection of the CES proposal to combine BGS-FP customers with BGS-LFP customers in a single customer group (CES BOE at 12-15); and (3) the CES misunderstanding and misstatement of IIEC’s alleged position on the migration risk factor adder (CES BOE at 15-20). Finally, IIEC will respond to the DES/USESC exception to the Proposed Order’s decision to approve the offering of a one-year fixed price product to customers with demands greater than 1 MW. (DES/USESC BOE App. A at 6).

IIEC supports the Proposed Order’s conclusion that Ameren’s Rider D - Default Supply Service Availability Charge (“Rider D”) should not be adopted in this proceeding. (PO at 241). IIEC

supports the Proposed Order's rejection of the CES proposal to combine BGS-FP and BGS-LFP customers for auction purposes during the annual auction. (PO at 125). IIEC supports the Proposed Order's conclusion on adopting the 30-day window for over 3 MW customers (assuming a separate auction segment is created for those customers). (PO at 203-204). Finally, IIEC supports the Proposed Order's decision to approve a one-year fixed price product for all customers over 1 MW. (PO at 128).

I. Response to Ameren

Rider D

Ameren challenges the Proposed Order's rejection of its proposed Rider D tariff. (Ameren BOE at 17-19). As proposed, Rider D would impose a per-kWh charge on all customers taking Rider RTP-L hourly pricing service from Ameren, and all customers eligible for the service but taking some other supply service from Ameren or taking supply service from a RES. The revenues collected would flow directly to the winning BGS-LRTP product supplier. The charge is unrelated to any Ameren cost of providing service. (PO at 241; *See* IIEC Init. Br. at 46-50).

The Proposed Order rejects Ameren's Rider D charge, *inter alia*, because "the record simply provides no cost basis for the particular charge proposed." (PO at 241). In addition, the Proposed Order concluded that (even accepting Ameren's notion of an incentive to bidders) "there is no way to know if the level of the charge proposed . . . would accomplish Ameren's stated goal." (PO at 241). No potential bidders supported the charge. Ultimately, the Proposed Order determined it should be the market that determines how many wholesalers will bid to supply this product and not artificial market incentives. (PO at 241). IIEC strongly supports the Proposed Order's well-reasoned conclusion.

In its proposed substitute language, Ameren presents four reasons for reversal of the Proposed Order's recommended decision on Rider D. Ameren argues that (1) the lack of a reassuring auction history in Illinois justifies an "incentive," instead of reliance on the market; (2) New Jersey had the same charge; (3) customers should pay for the option to take the BGS-LRTP product; and (4) we can make it better later. (Ameren BOE at 18-19). An examination of each argument confirms the appropriateness of the Proposed Order's rejection of the Rider D charge.

Ameren argues that the absence of history for the BGS-LRTP auction product means that one cannot ascertain in advance whether customers --or suppliers -- will be interested (or remain interested) in the product. (Ameren BOE at 17-18). That is, of course, the nature of competitive markets. However, Ameren appears to believe that this fact authorizes and justifies imposing an "incentive" charge, outside the cost-based rate requirements of the PUA. (*See* 220 ILCS 5/16-108, 5/1-102, ("Charges for delivery services shall be cost based . . .")). Ameren's inability to ascertain suppliers' interests does not justify the charge.

Briefly, Ameren argues that Rider D was intended to assure a revenue stream for successful bidders on the BGS-LRTP product. (Ameren BOE at 17). Ameren characterizes the revenue stream to suppliers as "de minimus". (Ameren BOE at 2). If this is the case, how could such an incentive cause bidders to participate in what is otherwise (presumably) an unattractive auction. Ameren fails to provide an answer.

Ameren asks the Commission to ignore the cost support requirements of the Act for its proposed charge because "[i]ncentives seldom can be calculated to some actual cost. . . ." (Ameren BOE at 18). Ameren offers this inability to comply with the Act as the basis for its Rider D request. Indeed, Ameren acknowledges that "...there may never be a true cost basis for this particular

charge...” (Ameren BOE at 18). These admissions compel affirmation of the Proposed Order’s rejection of the charge because it lacks the required cost basis. The Commission is not authorized to make exceptions to clear statutory requirements of the PUA. (220 ILCS 5/16-108).

Ameren’s second argument, like its first, asks the Commission to ignore statutory ratemaking principles. The simple fact that New Jersey utilities’ had a similar charge does not constitute cost support. (*See* Ameren BOE at 18-19). “Ameren has merely copied a charge used by different utilities, in a different state with different markets.” (PO at 240, *quoting* IIEC R. Br. at 37). Moreover, there is no evidence that even the New Jersey charge had a valid cost basis.

The third argument from Ameren states a valid ratemaking principle -- cost causation -- but seeks to impose the Rider D charge without due regard to causation. Ameren’s Brief on Exceptions correctly has abandoned the utility’s self-defeating assertion that Rider D recovers certain supplier costs not caused by customers. (*See* Cooper Reb. Resp. Ex. 15.0 at 15:299-16:340). However, the costs involved still are not costs incurred by the utility and eligible for tariff charge recovery.

Further, Ameren still argues for imposing Rider D charges, related to its real time pricing product BGS-LRTP, on an over-broad class of customers. Customers affected by Rider D include not only those who take the utility’s real time service under Rider RTP-L, but also those customers who take service from an alternative supplier. Customers taking service from alternative suppliers would be required to pay for service they do not take. Adherence to the cost-causation principle would bar recovery from those customers, even if the costs were utility costs. The proposed Rider D charges are not just and reasonable, as the Proposed Order properly concluded.

Finally, the utility implies that because the level of the charge could be modified in future years, Ameren’s failure to provide any cost basis should be overlooked. Ameren opines that the

level of the charge could be corrected in future years. (Ameren BOE at 19). Ameren does not explain how improper collections from customers in earlier years will be corrected. The PUA does not permit such “trial and error” ratemaking. The utility has the burden of showing that its proposed charges are just and reasonable before they are imposed on ratepayers. (220 ILCS 5/9-201). Ameren has failed to do so.

The adoption of the Proposed Order’s conclusion simply means that suppliers will be permitted to include a premium in their BGS-LRTP bid, thus allowing suppliers to compete to cover any associated risk. (*See* Dauphinais Dir. IIEC Ex. 2 at 16:342-351). The Proposed Order’s findings and conclusions rejecting Ameren’s proposed Rider D should be adopted.

II. Response to CES

CES makes certain recommendations for modification of the Proposed Order it says are consistent with “... principles of ‘Customer Focus’ and ‘Market Reliance’.” (CES BOE at 3). However, the alleged CES focus on customers and market reliance will result in increased prices to those customers and impose adders, which are not consistent with a market-based approach.

A. Enrollment Window

First, the CES recommendation that the Proposed Order be modified to adopt a 50-day enrollment window for the first auction and a 45-day enrollment window thereafter, should be rejected. CES claims that customers require more time to decide on taking the BGS-LFP product. CES takes the position that the additional price these customers would pay is worth the additional time. (CES BOE at 7).

CES ignores the interests of larger customers, such as the IIEC companies in this case. Such customers have clearly indicated they do not require additional time and would prefer not to pay the

additional premium. (IIEC Init. Br. at 39-4; IIEC R. Br. at 29-32). CES, on the other hand, is made up of retail electric suppliers, who will not pay the higher price, but certainly will benefit if the price for electricity charged by Ameren under BGS-LFP is increased to reflect the risk premium associated with the expansion of the enrollment window. (IIEC R. Br. at 31).

CES reports that in the spirit of compromise its members proposed to increase the enrollment window to 50 days for the first auction and 45 days thereafter. (CES BOE at 6). IIEC would only note the “compromise” was reached among CES members only. CES members do not represent the end-use customers that actually pay for the electricity.¹ The compromise among electric suppliers conveniently raises the price to the end-use customers. It should be rejected.

The Proposed Order reasonably adopts a 30-day enrollment window for customers over 3MW. (PO at 203).² The enrollment window is consistent with the Staff’s recommendation that the enrollment window be no longer than 45 days. (Staff Init. Br. at 158). It is consistent with a recommendation of IIEC, and it is consistent with the representation of Ameren witness Mr. Warner Baxter, Vice-President and Chief Financial Officer of Ameren Corporation, that the Ameren auction was designed to procure power at least cost to customers. (Baxter Dir. Resp. Ex. 1.0 at 4:52-55). If the Commission were to adopt the CES proposal, the result would be increased cost to customers, not the cost minimization promised by Ameren. The CES proposal should be rejected.

¹CES asserts without evidentiary support, that another party has endorsed this “compromise” in the ComEd proceeding. (CES BOE at 6). This extra-record information should be given no weight, even if true.

²The Proposed Order should be modified to adopt IIEC’s recommendation to create a separate auction segment for over 3 MW customers to ensure the full benefit of the 30-day enrollment window is available to customers. (*See* IIEC BOE at 10-14). IIEC supports the use of a 30-day enrollment window as recommended by Ameren, if a separate auction segment is not created for the over 3 MW customers.

CES suggests that an enrollment window of less than 50 days in the initial auction and 45 days in subsequent auctions represents a retreat from competition, not contemplated by the General Assembly. (*e.g.* CES BOE at 9). IIEC respectfully suggests that it was the intent of the General Assembly that customers benefit from lower costs as a result of competition, not a higher cost as contemplated by the CES proposal to lengthen the enrollment window, thereby increasing the risk premiums reflected in the prices customers would pay. (*See* 220 ILCS 5/16-101A(e), indicating that it was the intent of the General Assembly that consumers benefit from lower costs of electricity). Therefore, the CES proposal should be rejected. The evidence in the record clearly shows it will raise electricity prices, contrary to legislative intent.

CES argues that the Proposed Order gives weight to unsubstantiated concerns about an adverse impact upon price. However, these concerns have been substantiated. Mr. Michael Smith, a Vice President of Regulatory and Legislative Affairs for Constellation Energy Commodities Group, testified that it was likely that suppliers would price an auction premium into their bids to reflect the optionality associated with the period of time the customer would have to choose to take BGS-LFP service. (Smith Dir. CCG Ex. 1.0 at 1:8-12 and 3:80-88). In addition, other potential suppliers testified in this proceeding: (1) that the more risk and uncertainty suppliers are required to accept the higher the auction clearing prices will be; and (2) that the time-related uncertainty is one of the reasons prices are not kept open by suppliers for an extended period of time. (Huddleston Jt. Tr. 1041-1042). Indeed a CES witness recognized that his own company, as a standard rule, would not hold open prices for lengthy periods of time. (*See* O'Connor Jt. Tr. 209-210). Ameren witness Mr. Blessing also testified that increasing the auction window will increase the auction price for the BGS-LFP product. (Blessing Reb. Resp. Ex. 11.0 (Rev.) at 28:631-634).

Staff presented analysis to show the potential impact of lengthening the enrollment window. (See PO at 200, 203). The analysis showed that 3.2% of the auction price could represent risk associated with the 30-day window and for each additional 10 days the enrollment window is lengthened, a hypothetical bidder could include a premium of 0.4% in their bids. (Schlaf Dir. Staff Ex. 13.0 at 4:93-97). The Proposed Order correctly relies upon Staff's analysis in reaching its decision. (*Id.*). CES characterizes Staff's analysis as a theoretical model. (CES BOE at 10). CES, on the other hand, presented no evidence of any kind which demonstrates the absence of such a premium. CES instead emphasizes that under the Staff's model, bidders "might" include a premium. However, CES ignores completely the testimony of the suppliers and its own witness identified above. This testimony clearly shows that suppliers will, in fact, include a premium in their bids. Staff's analysis quantifies the risk premium that will be added.

The Proposed Order should remain unchanged on this issue. The CES proposal to expand the enrollment window to 50 days for the first auction and 45 days thereafter should be rejected.

B. Combination of BGS-FP and BGS-LFP Customers

CES argues that the Commission should modify the Proposed Order to require Ameren to group its smaller BGS-FP customers (customers with 400 kW to 1 MW of demand) with the larger BGS-LFP customers (customers with demands ranging from 1 MW to 300 MW) in the annual auction. (CES BOE at 12-15). The Proposed Order correctly rejects this proposal. (PO at 125). Specifically, the Proposed Order correctly reasoned that from a very practical point of view, the proposal cannot be implemented because Ameren does not have the metering available to allow it to establish the load profiles needed for combining 400 kW customers with the BGS-LFP customer

group as currently defined by Ameren. (PO at 125). As the Proposed Order correctly concludes, this issue can be more appropriately addressed at a later time.³

The Commission Staff agreed that Ameren does not have the necessary metering capability to establish the load profiles for these customers and, therefore, the CES proposal should not be adopted. (PO at 124).

CES offers several reasons for modification of the Proposed Order. None of them are persuasive.

First, CES suggests that Ameren should not be rewarded for its failure to install adequate metering during the mandatory transition period. The Proposed Order's refusal to adopt the CES proposal is not a reward for failure to install metering. Rather, it is a recognition that the metering is necessary in order to make the step that CES proposes a practical one. This is a point which CES does not directly dispute. Instead, CES proposes to move customers with an uncertain load profile into a group of customers whose loads are adequately metered. (*See* Cooper Reb. Resp. Ex. 15.0 at 396-407, 413-420). CES gives no consideration to the adverse impact of including the 400 kW to 1 MW customer group in the BGS-FLP customer group on the larger customers in that group.

CES criticizes the Proposed Order's recommendation that the issue be addressed in later auctions, suggesting that it is a "mistake" not to combine two distinct customer groups by including the 400 kW customers in the customer group that includes customers with demands of up to 300,000 kW. (*See* CES BOE at 13-14; Nelson Tr. 184). No one can credibly suggest that there is a similarity between the load profiles of a 400 kW commercial customer and a 300,000 kW

³If for any reason the Proposed Order is modified to adopt the CES position, which it should not be, then it is even more important to adopt IIEC's recommendation to create a separate auction segment for the over 3 MW customers.

industrial customer. CES does not explain how it determined that a mistake has been made, when there is not sufficient data available to determine the load profiles of 400 kW to 1 MW customers.

Next, CES argues there is “likely” a similarity in the switching risks of 400 kW to 1 MW customers on the ComEd system and the 400 kW to 1 MW customers on the Ameren system. (CES BOE at 14). However, the “likely” similarity in switching behavior gives no consideration to the substantive difference in size and load characteristics of the customer groups CES wants to combine. CES does not explain how or why 400 kW customers on the AmerenIP, AmerenCILCO or AmerenCIPS systems should be included in the BGS-LFP customer group, which includes customers with up to 300,000 kW of demand, simply because they are “likely” to share switching characteristics with a 400 kW customer on the ComEd system. Indeed, the record here establishes that there is a relatively low level of competitive activity in the service territory of the Ameren Companies, making it difficult to draw any conclusions on the similarity of switching in the ComEd service territory and the service territory of those companies. (*See* IIEC Init. Br. at 10-11; IIEC R. Br. at 5-8).

Further, no party has (or could) claim that switching risk is determinative of load profile, or that it is anything beyond one element in determining cost. Switching risk has to do with uncertainty of customers taking the utility supply. (Blessing Reb. Resp. Ex. 11.0 (Rev.) at 26:569-571). Load profile has to do with how much power to supply each hour. (*See* Cooper Reb. Resp. Ex. 15.0 at 19:396-400).

CES also argues there are lessons to be learned from New Jersey that support its recommendation to include 400 kW customers in the BGS-LFP customer class which includes customers with 300,000 kW of demand. Specifically, it notes that all customers with a peak load

of 1.25 MW or greater in New Jersey are placed in that State's hourly priced auction. CES also notes that customers under 1.25 MW are offered a blended product made up of 1 and 3 year wholesale auction products. CES suggests the New Jersey experience supports its recommendation. The logic of the CES position is difficult to perceive. Indeed, it would suggest that the 400 kW to 1 MW customers on the Ameren system should be entitled to a blended product made up of 1 and 3 year wholesale auction products and should not, in fact, be included in the BGS-LFP customer grouping which will be entitled only to a one-year fixed price product.

For all the reasons stated above, the CES proposal to modify the Proposed Order to combine 400 kW customers into a customer group with 300,000 kW customers should be rejected. The Proposed Order's resolution of this matter should be adopted by the Commission.

C. Migration Risk Factor

Clarification of IIEC's position on migration risk factor is warranted. CES argues that IIEC has presented extensive testimony and pleadings with regard to the migration risk factor and the need for an adder to be implemented as part of developing an accurate translation mechanism for the ComEd Power Procurement Auction. (*See* CES BOE at 16). CES cites to IIEC Exhibit 1 at lines 254-262 and to page 39 of IIEC's Initial Brief in support of its argument. CES misstates IIEC's position and mischaracterizes IIEC's evidence. First, no IIEC witness took a position on the use of the migration risk factor for the BGS-FP auction. The IIEC testimony cited by CES was offered in support of a separate auction segment for over 3 MW customers, in the BGS-LFP auction, and having those customers prequalify their load. IIEC specifically suggested that these proposals were beneficial in that they would help to mitigate the load risk for suppliers. (Stephens Dir. IIEC Ex. 1 at 12:254-13:272). Second, the only reference to risk premiums, on page 39 of IIEC's Initial Brief,

is a reference to risk premiums associated with increasing the 30-day sign-up/enrollment window. Third, IIEC would ordinarily oppose the use of adders to electricity prices and certainly would recommend the Commission, however it resolves this issue, not indicate that it is taking the position that adders for migration risk premiums are appropriate as a matter of policy.

CES also argues that the Proposed Order would improperly allocate costs to residential customers. (CES BOE at 17). It specifically suggests that the order, instead of relying on evidence allegedly presented by ComEd and IIEC in this case, relies on assumptions regarding risk allocation. (CES BOE at 17). CES is incorrect in implying that IIEC evidence supports or suggests the use of an administratively determined migration risk factor as a means of addressing allocation of migration risk. As noted above, IIEC did not and does not support such an approach. In addition, IIEC notes that any evidence presented by ComEd is in the ComEd case in Docket No. 05-0159 and is not a part of the record in this proceeding. Therefore, it cannot be relied upon by the ALJ or the Commission in reaching any determination in this case. The Commission's determinations must be based upon the record in this case. (*See* 220 ILCS 5/10-103). In addition, the evidence presented by CES appears to be evidence that is ComEd-specific and, therefore, could not readily be applied to Ameren. (*See* PO at 208, describing Staff's position that the CES migration risk factor was based upon evidence specific to ComEd).

Finally, CES argues the Proposed Order improperly discounts substantial record evidence presented by IIEC and CES supporting the migration risk factor. (CES BOE at 19-20). However, in this portion of its brief, CES cites only to pages 42-43 of IIEC's Initial Brief in this proceeding. Pages 42-43 of IIEC's Initial Brief address IIEC's alternative proposals for interruptible service, not

migration risk premium adders or factors. Therefore, IIEC disagrees that the Proposed Order ignored any “substantial evidence” presented by IIEC supporting a migration risk factor.

IIEC did not, and does not, support the use of an administratively determined adder to reflect migration risk. IIEC believes that any problem associated with migration risk could be better addressed through the proper design of auction segments and auction products. For example, IIEC believes that the approval of a separate BGS-LFP auction segment for over 3 MW customers would ensure that any implicit migration risk premium associated with these customers is minimized and stays within the over 3 MW customer segment. A properly designed auction with appropriate auction segments for each distinctive customer group and appropriate product design would eliminate the alleged need for a migration risk adder.

III. Response to DES/USESC

DES/USESC recommend the Proposed Order be modified to adopt their position that customers with demands equal to or over 1 MW be placed on an hourly energy product. (*See* DES/USESC BOE App. A at 6). IIEC disagrees with this recommended modification.⁴

IIEC addressed this issue in its Initial and Reply Briefs. (IIEC Init. Br. at 29-31; IIEC R. Br. at 23-24). Record evidence shows there has been minimal competitive activity in the service territories of the Ameren Companies. (Stephens Dir. IIEC Ex. 1 at 4-5:77-80). The record also establishes that price stability is an important consideration for all customers, large and small. (*See* Stephens Dir. IIEC Ex. 1 at 6:117-120). Even Ameren witnesses recognized the importance of price

⁴DES/USESC recommend modification of a conclusion at page 128 of the Proposed Order which relates to IIEC’s recommendation for a separate auction segment for over 3 MW customers. The Proposed Order actually reaches the conclusion that the provision of a fixed price product to customers over 1 MW is reasonable at page 126.

stability in retaining industrial customers in Illinois. (Nelson Tr. 162-163). Finally, the record clearly establishes the extreme volatility of hourly pricing. (*See* Domagalski/Spilky Dir. CES Ex. 3.0 at 22:454-456). Under these circumstances, the Proposed Order has correctly concluded that all customers with demands equal to or greater than 1 MW should be eligible for a fixed price product from Ameren. The DES/USESC proposal was properly rejected by the Proposed Order and it should be rejected by the Commission.

IV. Conclusion

The recommendations of Ameren, CES and DES/USESC to change the Proposed Order as described herein should be rejected.

DATED this 30th day of December, 2005.

Respectfully submitted,

Eric Robertson
Ryan Robertson
Lueders, Robertson & Konzen
1939 Delmar Avenue
Granite City, IL 62040
erobertson@lrklaw.com
ryrobertson@lrklaw.com

Conrad Reddick
Attorney at Law
1015 Crest Street
Wheaton, IL 60187
conradreddick@aol.com

52919.1