

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

REPLY BRIEF ON EXCEPTIONS OF THE AMEREN COMPANIES

December 30, 2005

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	REPLY TO EXCEPTIONS	1
	A. General Comments on Exceptions of the Attorney General and CUB.....	1
	B. Legality of the Proposed Tariffs (Proposed Order Section III).....	2
	C. Commission Authority and the Need for a Section 9-201 Filing (Proposed Order Section III.B)	3
	D. Prudence (Proposed Order Section III.D)	5
	E. References to Post-2006 Initiative (Proposed Order Section III.F)	6
	F. Competitiveness of Wholesale Markets/Efficacy of the Auction (Proposed Order Section IV)	8
	G. Load Caps (Proposed Order Section V.C.1)	10
	H. Representation of Consumer Interests (Proposed Order Section V.E.2).....	13
	I. Common Deliverability Test (Proposed Order Section V.G.2)	15
	J. Blended, Fixed-Price Auction Products and Nature of Auction Product and Tariffed Services for 1 MW and Over Customers (Proposed Order Sections V.H.1 and V.I.1)	16
	K. One-Year Fixed Price Product for 400 kW-1 MW Customers (Proposed Order Section V.H.2).....	18
	L. Separate Auction for 3+ MW customers (Proposed Order Section V.I.4).....	20
	M. Credit Requirements (Proposed Order Section V.L.2)	22
	N. Payment Disputes (Proposed Order Section V.L.8)	23
	O. Supplier Indemnification of The Ameren Companies Liability under Section 16-125 (Proposed Order Section V.L)	25
	P. "Customer Choice" Initiative (Proposed Order Section V.K.3)	27
	Q. Rider MV - Enrollment Window (Proposed Order Section VII.B.4.a)	28
	R. Rider MV - Opt-In vs. Opt-Out and Other Switching Rules (Proposed Order Section VII.B.4.b)	30
	S. Rider MV - Migration Risk Factor (Proposed Order Section VII.B.6.a).....	31
III.	CONCLUSION	31

I. INTRODUCTION

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 (the "Ameren Companies") submit this Reply Brief on Exceptions to the Administrative Law Judge's ("ALJ") Proposed Order in this matter dated December 9, 2005 ("Proposed Order"). For the most part, the parties' Briefs on Exceptions rehash arguments already presented in the parties' Initial and Reply Briefs. As the Ameren Companies has previously responded to these arguments at length in their Initial and Reply Briefs, they will not reply to those arguments here. Instead, the Ameren Companies rely on, and incorporate by reference as appropriate, the arguments of their Initial and Reply Briefs. To the extent a more specific reply to a party's exceptions to the Proposed Order is required, it is set out below.

II. REPLY TO EXCEPTIONS

A. General Comments on Exceptions of the Attorney General and CUB

Before turning to individual exceptions, we have general comments about the exceptions of the Attorney General ("AG") and the Citizens Utility Board ("CUB"), the only parties to oppose the auction process. It has been said by some that a camel is a horse built by committee, while others have observed this is unfair to camels and overly kind to committees. Both the AG's and CUB's Exceptions appear to have been written by a committee, anxious to accommodate everyone's views, regardless of whether those views contradict one another – which they do. The contradictions are fatal to the positions of both the AG and CUB. For example, the Ameren Companies cannot both be a victim of an uncompetitive wholesale market, but at the same time have "market power and leverage" in that same market. Nevertheless, the AG argues both, without blushing.

The contradictions at the heart of the AG's and CUB's arguments are not new. The AG and CUB may not present consistency in their reasoning, but they have consistently presented their inconsistent reasoning throughout the case. What is new is their failure to grasp what this case is about. The AG does not seem to understand what the Ameren Companies have filed in this case, or that rates based on historical ownership of generating assets would not properly capture the variability of costs incurred in the wholesale market. Further, neither CUB nor the AG grasps the limits on the Commission's jurisdiction, and both seek to turn this proceeding into a referendum on the reasonableness of wholesale electric rates.

This case will ultimately be decided on the law and on the facts in the record. The Ameren Companies have explained to the Commission that this proceeding is of fundamental importance to the electric utilities and their customers in Illinois. There is no room for fuzzy logic, whether the result of intellectual sloppiness or intent. Nor can the Commission engage in an off-campus frolic, adjudging whether wholesale rates are reasonable. The Commission must confine itself to its task: determining whether the auction presents a reasonable and prudent means of acquiring reliable supply, while minimizing costs. The record overwhelmingly supports the ALJ's conclusion that it does, and the Commission should adopt that conclusion as its own.

B. Legality of the Proposed Tariffs (Proposed Order Section III)

Reply to AG & CUB

The AG and CUB again argue that the proposed tariffs and the auction process are illegal under Section 16-103 of the Public Utilities Act ("Act"). 220 ILCS 5/16-103. The Commission has previously rejected this argument, and the Ameren Companies addressed it at length in their Initial Brief (pp. 5-25) and Reply Brief (pp. 2-12).

CUB adds a slightly new twist to its argument by contending that the *City of Chicago* case, which authorizes the use of riders, is not on point, because the Ameren Companies' proposed riders "do not resemble" the rider at issue in *City of Chicago*. (CUB BOE, p. 14.) To the contrary, it is hard to imagine a rider more like the one approved by the Illinois Supreme Court in that case.

City of Chicago dealt with a gas company rider designed to track changes in the cost of gas supply. The gas company owned no production facilities; it would purchase all supply it needed in the wholesale market and recover its costs from its customers. There was no fixed commodity rate. The rate under the rider was a function of the actual cost of supply to the gas company. Here, the Ameren Companies own no production facilities. They will purchase their supply in the wholesale market and will recover their costs from their customers. There will be no fixed commodity rate. The rate under the rider will be a function of the actual cost of supply to the Ameren Companies.

The only "difference" between the riders is that in this case, the Commission is dictating how the Ameren Companies should acquire the commodity, which provides added protection for customers. The Ameren Companies must follow a detailed set of procedures, and the Commission Staff will be engaged in the process. Accordingly, *City of Chicago* fully supports the Ameren Companies' proposal.

C. Commission Authority and the Need for a Section 9-201 Filing (Proposed Order Section III.B)

Reply to AG

The AG opens its Brief on Exceptions by arguing that there is no need to approve the Ameren Companies' proposed tariffs, because:

If any of the Ameren Companies believe their existing bundled rates are inadequate to cover costs, they should request a rate increase and comply

with Parts 285, 286 and 287 of the Commission's rules which specify the information necessary to justify a rate change. 83 Ill. Adm. Code Parts 285, 286, 287.

(AG BOE, p. 3.)

In fact, the Ameren Companies have filed tariffs that would establish rates for generation service under Section 9-201 of the Act. Whether those tariffs produce a rate increase is fully dependent on what the Ameren Companies' future costs of power procurement are. In any event, the Ameren Companies requested a waiver of the Standard Information Requirements of 83 Ill. Admin. Code Part 285 with respect to these tariffs in Docket No. 05-0128. The AG did not challenge the Ameren Companies' request in any way or at any time,¹ and the Commission issued a final order granting a waiver of the Part 285 requirements on April 20, 2005. Order, Docket No. 05-0128 (April 20, 2005). The AG did not seek rehearing of, or appeal, the Commission's final order.

The AG's bizarre suggestion appears to be that if the Ameren Companies believe that their long-frozen, discounted rates are insufficient, they should file new tariffs under the terms of the Public Utilities Act and the Commission's rules. That, in fact, is exactly what the Ameren Companies have done, and it is exactly what this case is about.

It goes (almost) without saying that the Commission should not dismiss the Ameren Companies' rate case and order them to file a rate case. But that is what the AG is asking the Commission to do. The AG's Exception should be disregarded.

¹ In fact, no party opposed the Ameren Companies' request.

D. Prudence (Proposed Order Section III.D)

Reply to CUB

In its Exceptions, CUB argues that if the auction is approved, the presumption of prudence adopted in the Proposed Order should be eliminated. (CUB BOE, pp. 29-30.) CUB's proposal is based on its assumption that the Commission would have just three business days to assess the prudence of the auction process. This is not the case. As the Ameren Companies have pointed out before, this entire proceeding has been about the prudence of the auction process. The presumption adopted by the ALJ applies if the electric utility adheres to the procedures approved by the Commission in this case.

It is utter nonsense to suggest that the Commission would need more than three days to assess whether the procedures it adopts in an 11-month proceeding are prudent. The Commission doesn't need any time to do so. Moreover, the Commission doesn't need an extended period of time to assess whether the utility adhered to its procedures. Under the procedures adopted by the ALJ, the Commission's Staff will be significantly involved in the auction on an ongoing basis. That is sufficient to protect the process and consumers.

CUB also objects to the auction by suggesting that it is designed to benefit an Ameren Companies' affiliate, to avoid Federal Energy Regulatory Commission ("FERC") disapproval, and to avoid an after-the-fact prudence review. (CUB BOE, p. 20-26.) These irrational objections should be disregarded. First, as the Ameren Companies have explained, economically rational market participants are expected to compare auction prices against their opportunity costs and not accept auction prices lower than such opportunity cost. There simply is no solution that would afford the Ameren Companies any realistic opportunity to buy power at below-market prices - regardless of the seller's identity. (Resp. Ex 17.0 at p. 8.) Second, the Ameren Companies do not wish to avoid FERC scrutiny. Instead, the auction process was specifically

developed, at least in part, to satisfy FERC's scrutiny and to comply with FERC's standards. The Ameren Companies should be lauded for this goal, not condemned. Finally, the auction structure is designed to result in prices that are representative of the market and includes competitive safeguards to protect the auction and the consumers. Considering the protections built into the auction process (including the post-auction Commission review process), an after-the-fact prudence review is not warranted, not justified, unnecessary, and undesired.

E. References to Post-2006 Initiative (Proposed Order Section III.F)

Reply to AG

The Ameren Companies agree with the Proposed Order's conclusion that its decision to allow testimony regarding the Post-2006 Initiative workshops has already been determined, and that decision is not before the Commission in its Final Order. (Proposed Order ("P.O."), p. 82.) The Proposed Order correctly notes that "the Post-2006 Initiative was an innovative and inclusive process that provided a valuable opportunity to explore and develop alternatives on the critical issues relating to post-2006 electric supply acquisition," and that parties who disagreed with the "thrust 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." (*Id.*) The AG, however, refuses to let this issue die, continuing to argue that no party should be allowed to make mention of any results or progress achieved through the important workshop process. (AG BOE, pp. 9-15.)

The ALJ correctly denied the AG's Motion in Limine because the preamble to the Post-2006 Initiative does not preclude use of working group reports, Staff conclusions, and other consensus results of the workshops. (*See* ALJ Ruling, Sept. 29, 2005; Ameren Cos. Resp. to

Mot. in Lim., pp. 1-3.) To the contrary, each workshop participant knew that the main purpose of the workshops was, in fact, to achieve such consensus and to narrow issues in future litigation:

It is reasonably foreseeable that issues discussed in Working Group sessions and in written material circulated among Working Group participants will or may become the subject of future proceedings. Meetings of the Working Group are being conducted for the purpose of defining the critical post-transition issues and determining how best to meet the requirements of the Act and the legitimate needs of all participants in the Illinois retail and wholesale electric markets, including electric utilities, alternative retail electric suppliers, consumers, independent power producers, and others. It is also hopeful that the Working Group sessions will resolve or narrow issues that might otherwise be the subject of the above proceedings.

See Confidentiality Agreement, available at <http://www.icc.illinois.gov/ec/ecPost.aspx>. In the spirit of the expressed purpose of the Post-2006 Initiative process, the Ameren Companies have relied upon the results of the workshops in defining and shaping the tariffs proposed in these proceedings. (Resp. Ex. 17.0, p. 6.) The workshops were undertaken in hopes of minimizing disagreement in these proceedings by incorporating into the proposal certain pre-settled issues and consensus components. In that spirit, and in the spirit of providing necessary context for these proceedings, witnesses for the Ameren Companies have offered specific testimony regarding Post-2006 Initiative workshop results, and the role that such results have played in designing the tariffs at issue. (*See, e.g.*, Resp. Exs. 1.0, p. 5; 2.0, pp. 35-38; 17.0, pp. 4-8.) The ALJ appropriately determined that the Ameren Companies' testimony regarding this issue was admissible. (ALJ Ruling, Sept. 29, 2005.)

For the reasons stated in the Ameren Companies' Initial Brief, in its Response to the Motion in Limine, by the ALJ in the Order on the Motion in Limine, and in the Proposed Order, testimony regarding Post-2006 Initiative Workshop results have been appropriately considered by the ALJ. The proposed exceptions of the AG should be rejected.

F. Competitiveness of Wholesale Markets/Efficacy of the Auction (Proposed Order Section IV)

Reply to AG and CUB

The AG (AG BOE, pp. 20-23), and CUB (CUB BOE, pp. 16-20), contend that the wholesale market is not sufficiently competitive to support the auction, and therefore the Ameren Companies should purchase power in the wholesale market. This is not garbled typing in these briefs. That is really their position.

There are several problems with the thinking of the AG and CUB on this point. First, there is no alternative to the wholesale market, as the Ameren Companies explained, and as the ALJ clearly grasped in the Proposed Order. The Ameren Companies have no generation, and they have to buy power somewhere. The only "somewhere" that anyone has identified is the wholesale market. Even if the Commission were to conclude that the wholesale market is flawed, that does not indicate that there is any alternative.

Even the AG and CUB acknowledge that power must come from the wholesale market. Their "alternative" to the auction is to have the Ameren Companies "manage" a portfolio of purchases from the wholesale market. If the wholesale market is flawed, there is no reason to believe that breaking up power procurement into pieces will produce any lower price than the auction for the entire load. A monopolist wouldn't sell to you at a lower per unit price simply because you were buying fewer units.

Second, neither the AG nor CUB has identified any real flaw in the wholesale market. Their real complaint appears to be that lower cost producers make more money than higher cost producers. That is true in every sector of the economy, and it should not startle us to learn that it is also true with respect to wholesale electric transactions.

Third, even if there were some flaw in the wholesale market, it is not clear what this Commission could do about it. The AG and CUB spend a significant amount of time complaining about wholesale prices, but neglect to mention that only FERC can regulate them. We have discussed this elsewhere, but we'll summarize here: this Commission cannot tell wholesale sellers what to charge. (Ameren Cos. Init. Br., pp. 20-23; Reply Br., pp. 10-11.)

In this regard, CUB doesn't understand the meaning of the case law. CUB argues, in its exceptions, that the Ameren Companies have argued that the Commission does not have jurisdiction to assess the prudence of choosing between two different wholesale prices. (CUB BOE, p. 10-11.) To the contrary, the Ameren Companies have not made such an argument, because that is the only jurisdiction the Commission has with respect to wholesale prices. What the Commission cannot do, but both the AG and CUB want it to do, is to compare actual wholesale prices with what the AG and CUB think prices should be in the wholesale market.

The AG, in particular, should know better. The AG was just chided by FERC in FERC's review of the Commonwealth Edison ("ComEd") auction. In that proceeding, the AG made many of the same arguments that it has made here. The FERC rejected those arguments and approved the proposed auction. Commonwealth Edison Co. and Exelon Generation Co., slip op., Docket No. ER06-43-000 (Dec. 16, 2005). Thus, the agency with exclusive jurisdiction over wholesale transactions has found that the auction is a reasonable means of acquiring power at wholesale. This Commission cannot, and should not attempt to, substitute its judgment for that of FERC as to whether the wholesale prices resulting from the auction are reasonable. No amount of "study" recommended by the AG, and no measures taken by CUB's proposed independent market monitor, could ever alter the scope of the Commission's jurisdiction.

Fourth, it may stick in the AG's and CUB's craw that low-cost producers may earn what those parties believe to be an unhealthy margin, but no other proposal would produce any different result. The "managed portfolio" approach does not provide incentives to sellers to reduce their prices any further than the auction would, and the "pay as bid" proposal similarly provides no incentive (as FERC noted, under pay as bid, a utility could end up paying an affiliate a higher price than under the auction). Both proposals assume that sophisticated sellers do not know their own markets or the prices within those markets, and would, in effect, bid against themselves. This is a highly unlikely proposition, and, as the Ameren Companies explained previously, any procurement plan that rests on such an assumption is destined to failure. (Ameren Cos. Init. Br., p. 113-119; Reply Br., p. 77-78.)

Lastly, there is no reason to blame the auction for potential rates increases. The AG's lengthy discussion of rates in other jurisdictions is utterly irrelevant. The question before the Commission is how to minimize the Ameren Companies' power supply costs in the future. As we have amply explained, and the Proposed Order correctly finds, the auction process is a proper means of achieving that goal.

G. Load Caps (Proposed Order Section V.C.1)

Reply to IIEC

After considering the record in this proceeding, the Proposed Order correctly determined that the 35 % load cap proposed by the Ameren Companies is appropriate. (P.O., p. 103.) The Proposed Order also appropriately concludes that load caps not only serve as a competitive safeguard by limiting the influence that any one bidder can have on the auction results, but also reduce risks associated with reliance on any one particular BGS supplier. (*Id.*) Finally, the Proposed Order concludes that the benefits of the load cap outweigh any potential disadvantages. (*Id.*)

The Illinois Industrial Energy Consumers ("IIEC") objects to the adoption of any load cap (including the 35 % load cap adopted by the Proposed Order). (IIEC BOE, p. 1.) IIEC claims that imposing any load cap would distort auction competition and likely increase auction prices. (*Id.*)

On the other hand, Staff and Midwest Generation EME, LLC ("MWGen") recommend that the Commission approve the Ameren Companies proposed 35 % load cap and reject the IIEC's 100% load cap proposal. Staff concluded that the proposed 35 % load cap is supported by the weight of the evidence. (Staff Init. Br., p. 35.) Similarly, MWGen found that the proposed 35% load cap is appropriate and will be effective. (MWGen Init. Br., p. 6.) The Ameren Companies agree with the Proposed Order, Staff, and MWGen on this matter.

The load cap has been an important factor in the successful New Jersey BGS auction process. As detailed numerous times on the record, the Ameren Companies' auction proposal was modeled on the New Jersey auctions. The New Jersey auctions have included a load cap as a key component of their successful process. The New Jersey experiences provide a practical grounds for adopting a load cap.²

The Ameren Companies' principal objective in this proceeding is to obtain a reliable supply for its customers at prices that result from competition and reflect the best prices under market conditions. The best way to achieve this objective is to encourage participation in the auction and to ensure vigorous competition among bidders. The Ameren Companies included a load cap in their proposal to achieve this objective.

² IIEC's claim that one New Jersey auction has been run successfully without a load cap is misleading. (IIEC BOE, p. 4.) The great majority of the tranches in the New Jersey auctions have been subject to a load cap, with only one small utility treated differently due to its size.

There is no single load cap level that will ensure the effectiveness of the competitive safeguards and the success of an auction. (Resp. Ex. 12.0, p. 27.) Setting a load cap is a question of balance of the following factors: limiting bidder participation, ability to influencing auction results, ability to over-state interest, and diversification. (*Id.*) Evaluating a load cap level involves an assessment of each of these factors and a balance of the benefits and costs. Lower load caps could impose costs in terms of limiting participation. But these costs must be weighed against the potential benefits in terms of limiting overstatement of interest, curbing influence on the auction results, and promoting diversification of the BGS Supplier base. (*Id.*, p. 30.)

The Proposed Order concludes that benefits of the proposed load caps "outweigh any potential disadvantages." (P.O., p. 103.) By adopting the 35 % load cap, the Proposed Order inherently concludes that the Ameren Companies achieved a proper balance for the initial auction. (*Id.*) Eliminating the load cap does not achieve this balance.

Dr. LaCasse's testimony provides sufficient basis for concluding that load caps are a valuable component of the auction design and have important benefits. Dr. LaCasse based her conclusions on her full evaluation of each of these criteria based on her knowledge, training, and experience.

The testimony in this proceeding, the experience from four annual auctions in New Jersey, the opinion of experts such as Dr. LaCasse, and the advice from Staff overwhelmingly support the use of a 35 % load cap as a competitive safeguard as part of the Illinois Auction design. In light of the foregoing, IIEC's proposed exceptions to eliminate the load cap should be rejected.

H. Representation of Consumer Interests (Proposed Order Section V.E.2)

Reply to CUB

The Proposed Order correctly noted that the Staff, with its impartiality and expertise, will have a key role in protecting customer interests. (P.O., p. 114.) After consideration of the parties' comments, the Proposed Order found that the Staff is properly charged with the responsibility of observing and assessing the auction as a neutral party. (*Id.*) Staff is willing to accept the responsibility for observing and assessing the auction as a neutral party. Staff believes this is in the consumers' best interest. The Proposed Order permits, but does not require, the Staff to seek assistance from a consumer advisor.

CUB objects to the Proposed Order's failure to create and incorporate certain new entities into the auction process, claiming that the existing protections are not sufficient. Namely, CUB recommends the creation of a new state-level market monitor and a separate consumer observer.³ (CUB BOE, p. 32.) However, CUB's recommendation that the Commission condition approval of the proposed auction process on the creation of a state-level entity that would monitor the wholesale electricity markets proposes unreasonable and unworkable solutions to a problem that does not exist. In sum, CUB argues – without explanation or citation to the record – that the Midwest Independent Transmission System Operator ("MISO") market monitoring unit, coupled with the FERC, are "insufficient in preventing the exercise of market power." (*Id.*)

The Proposed Order does not conclude that there is need for an Illinois wholesale market monitor because CUB did not recommend such an entity in its initial brief or reply brief to the

³ Although CUB attempted to support the need for such duplicative oversight with its witnesses, CUB proposed neither a consumer advisor nor state-created market monitor in its briefs to the ALJ in this proceeding. Only now that the Proposed Order has been issued does CUB come forward to argue for the creation of these entities.

ALJ. CUB's failure to brief this proposal, instead raising this issue for the first time in its Brief on Exceptions, should preclude consideration of its proposal.

On a substantive level, CUB does not identify any basis for a state-level entity to monitor wholesale power markets engaged in interstate commerce. FERC, not the states, regulate the interstate wholesale market transactions. FERC expressed its exclusive jurisdiction in these matters in the following quote.

We recognize that states are concerned regarding the proper regulation of wholesale markets. We disagree, however, that state commissions can serve as coregulators with regard to wholesale energy markets. The Commission is the agency charged by statute with regulating public utility sales for resale in interstate commerce.

Midwest Independent Transmission System Operator, 111 FERC ¶ 61,448 at P 41 (2005).

CUB also argues that the Ameren Companies' auction should be overseen by a consumer advisor. Once again, CUB failed to brief this issue in the initial or reply briefs submitted to the ALJ. Again, CUB's failure to fully brief this subject before now should preclude considering of this section of CUB's Brief on Exceptions.

CUB claims that such a consumer observer is necessary because the auction managers and observers, including Staff, "have duties and obligations that may conflict with the interests of consumers." (CUB BOE , p. 33.) CUB does not cite any evidence to show how Staff's duties and obligations conflict with the interest of consumers. Rather, CUB's accusation flies in the face of the Proposed Order's finding that Staff is impartial. (P.O., p. 114.)

There is no need for an additional consumer advocate. As the Ameren Companies noted in earlier briefs, CUB is far from a neutral party in this matter. (*See, e.g.*, Ameren Cos. Reply Br., p. 31.) CUB has taken numerous steps to prevent the auction from taking place. Allowing the CUB (or the AG) to appoint a consumer observer would give those parties yet another avenue to derail the proposed auction process. (*Id.*) Staff correctly observed that it is in the best

interest of consumers for the Staff to act as the auction observers. Staff is an impartial party with extensive experience and expertise in working to protect customer interests.

For the reasons set forth above, the proposed exceptions by CUB regarding the appointment of a state-level wholesale market monitoring and a consumer observer should be rejected.

I. Common Deliverability Test (Proposed Order Section V.G.2)

Reply to IIEC

The Proposed Order finds that the cooperation by the Ameren Companies with ComEd, MISO, and PJM in developing a common deliverability test could potentially have benefits. (P.O., p. 120.) The Proposed Order then suggests that the Ameren Companies should so cooperate "to the extent such efforts are within [their] control." (*Id.*) Finally, the Proposed Order concluded that approval and implementation of the proposed auction "will not be conditioned upon the establishment of a common deliverability test or any joint effort relating thereto." (*Id.*)

IIEC accepts these conclusions, then goes further by recommending that the Ameren Companies be required to issue reports to the Commission every 90 days regarding the progress of developing the Common Deliverability Tests. (IIEC BOE, p. 9.)

The Ameren Companies are willing to cooperate with these other parties in a joint effort to implement a "common deliverability test." The Commission should not, however, require the Ameren Companies to file reports every three months into perpetuity regarding this process. Submitting these reports would create an unneeded administrative burden on the Ameren Companies. The requested reports are unnecessary because the PJM and MISO stakeholder processes through which such standards will be developed likely would be open to interested

parties, including the Commission and industrial consumer representatives. Such reports provide no benefit and have no place in this proceeding, where the Proposed Order specifically rejected IIEC's request to condition approval of the auction on "any joint effort relating" to the development of a common deliverability test.

For these reasons, the IIEC proposed exceptions to add a reporting requirement should be rejected.

J. Blended, Fixed-Price Auction Products and Nature of Auction Product and Tariffed Services for 1 MW and Over Customers (Proposed Order Sections V.H.1 and V.I.1)

Reply to DES/USESC

The Ameren Companies' auction proposal includes three primary products. Residential and Small Business ("R&SB") customers with demands under 1 MW will receive a fixed-price service. The Ameren Companies initially will seek to procure supply for its R&SB customers in a mix of one-year, two-year, and three-year supply periods so as to step into a three-year rolling procurement structure. (Ameren Cos. Reply Br., p. 38.) Larger customers (those with loads exceeding 1 MW) will be served through BGS-LFP tranches and BGS-LRTP tranches. BGS-LFP tranches represent one year fixed-price full-requirements service. BGS-LRTP tranches represent full-requirements service with real-time (hourly) priced energy. (*Id.*, p. 43.)

After thoughtful consideration, the Proposed Order concluded that the record supports adoption of the Ameren Companies' proposal for an annually-revised portfolio of three-year supply contracts serving R&SB customers. (P.O. at p. 122.) This conclusion was based on the findings that the overlapping contract structure: (a) protects against price unpredictability; (b) protects against instability; and (c) better balances the objectives of price stability, efficiency, practicality, and bidder participation. (*Id.*)

The Proposed Order also adopts the Ameren Companies' proposal that a fixed-price product be offered to customers with loads equal to or over 1 MW. (*Id.*, p. 126.) Based upon consideration of the record evidence, the Proposed Order concluded that the one-year fixed-price product proposed by the Ameren Companies would provide a "desired, and reasonable, level of price stability" to this customer group. (*Id.*)

Direct Energy Services, LLC and U.S. Energy Savings Corporation ("DES/USESC") object to the Ameren Companies' proposal on the grounds that the auctions would result in contracts with terms of one year and greater, and to the Proposed Order's adoption of that proposal. (DES/USESC BOE, pp. 2-8.) In the place of the rolling 3-year terms, DES/USESC urge an auction product design in which these customer's rates would vary monthly or quarterly based on corresponding monthly or quarterly auctions. (*Id.*, App. B.) In this proposal, larger customers could only receive hourly BGS pricing. DES/USESC's entire Brief on Exceptions addresses only this subject.⁴

Rate stability and mitigation of market volatility are two of the most important features of the Ameren Companies' product design. These features comport with the Commission's Post-2006 Initiative Procurement Working Group's ("PWG") consensus, which concluded that the auction process "should facilitate stable rates and mitigate volatility for applicable customers for relevant time periods." (Resp. Ex. 11 (revised), pp. 31-32.)

The DES/USESC Brief on Exceptions raises no new arguments and simply repeats the same mantra. The Ameren Companies stand behind their testimony and evidence and the Proposed Order's discussion in rejecting the DES/USESC proposals. DES/USESC's proposed

⁴ Nearly all of the replacement language offered by DES/USESC in Appendix A to its Brief on Exceptions is directly related to its objection to the long-term contracts. All of these proposed language modifications should be rejected along with the monthly/quarterly auction process.

product design is not consistent with the PWG concepts and cannot be procured efficiently using auctions. (*Id.*, p. 32-35.) Under the DES/USESC proposal, the customers would lose access to stable, market sensitive default service rates. The DES/USESC also would subject these same customers to the costs of administering up to sixteen auctions per year.

Staff completely disagrees with DES/USESC on this point. (Staff Init. Br., p. 91.) In its Initial Brief, Staff specifically concluded that the Ameren Companies' proposal places no restrictions on a current bundled customer's ability to switch to an ARES, nor does it prevent such alternative suppliers from entering the market or hinder them from offering new services. (*Id.*) Therefore, any claim that the DES/USESC proposal will advance the retail electricity market in Illinois should be rejected.

For the above reasons, the DES/USESC proposed exceptions seeking to implement its quarterly and monthly auction proposal should be rejected.

K. One-Year Fixed Price Product for 400 kW-1 MW Customers (Proposed Order Section V.H.2)

Reply to CES

The Coalition of Energy Suppliers ("CES") argue that the Commission should order the Ameren Companies to include its BGS-FP customers together with its BGS-LFP customers in the annual auction, so that the 400 kW to 1 MW customers are grouped with the over 1 MW customer. (CES BOE, pp. 12-15.)

Before attempting to refute the findings of the Proposed Order on this subject, CES makes a number of false or incorrect statements, such as:

The Proposed Order pardons Ameren for its failure to install proper customer metering within its service area...

(*Id.*, p. 12.) CES has not explained, or even previously argued, its basis for asserting that the Ameren Companies do not have in place the requisite metering required by 83 Ill. Adm. Code

Part 410. Rather, the real issue CES is raising is that the Ameren Companies have not installed interval metering for this limited customer segment in order to accommodate the CES' parochial version of an appropriate auction.

CES also asserts that the Ameren Companies have a "resistance to competition generally..." (*Id.*) To the contrary, the Ameren Companies have a long history of being supportive of retail competition and, indeed, in these proceedings have undertaken efforts to ensure an open and transparent auction that will result in true market prices. The Ameren Companies have even adopted CES' proposals intended to facilitate retail competition, such as the recovery of the supply procurement adjustment costs. It is unfathomable that CES makes the claim it does. CES must believe it will catch the Commission's eye by cloaking itself under the "retail competition" flag. However, the CES claim that the Ameren Companies are not supportive of retail competition is simply unfounded.

CES also asserts that the Ameren Companies failed to install adequate metering during the mandatory transition period. (*Id.*, p.13.) This statement is made without the benefit of any Commission order, statute, rule or regulation that would support a claim as to the appropriate metering that would have or should have been installed during the mandatory transition period.

CES is then unduly critical of the Proposed Order's forward looking considerations with regard to the reverse auction. CES asserts that deferral of its requests to later auctions is a "mistake" or a "misstep". (*Id.*, pp. 13-14.) Why this "factor" weighs heavily in CES' favor remains an unknown.

CES then points to claims of switching risk as justification in support of its proposal. Once more, CES points to information it has garnered in ComEd's service territory. (*Id.*, p. 14.) Once more, the record overwhelmingly demonstrates that it is inappropriate to extrapolate

information from the ComEd service territory and suggest it is applicable to the Ameren Companies' service territories. (Tr. 280-81.)

Next, CES asserts that segregation of the 400 kW to 1 MW customer class for purposes of the auction, or including this customer group as part of the over 1 MW customer class for purposes of the auction, somehow mitigates against the Ameren Companies' proposed staggered contract terms. (CES BOE, p.14.) The argument does not make any sense. In each year of the auction, suppliers will be asked to bid on specified products. These products will be available to specified customer groups. If it turns out in year five that the 400 kW to 1 MW customer group is now part of the BGS-LFP customer group, the one-third of the 400 kW to 1 MW load which was included in the expiring BGS-FP SFCs will be bid out as part of the BGS-LFP load. This amount would increase to two-thirds in the following year, and 100 percent of the 400 kW to 1 MW load would be included in the BGS-LFP load in year seven.

The Commission should support the Proposed Order's requirement that the Ameren Companies install interval meters for this class of customers, obtain the necessary demand profile and other information, and give consideration to a separate auction product for this group at a later time.

L. Separate Auction for 3+ MW customers (Proposed Order Section V.I.4)

Reply to IIEC

Having reviewed the record, the Proposed Order correctly rejected the IIEC's proposal to create a separate auction segment for customers with loads greater than 3 MW. (P.O., p. 128.) IIEC objects to this holding and requests that the Commission adopt a separate auction segment for the 3+ MW customer groups in the initial auction. (IIEC BOE, p. 10.) IIEC's objections are not convincing and should be rejected.

The Ameren Companies' product design focuses on providing consumers with a simple, viable default service option at the lowest cost. (Resp. Ex. 18.0, p. 16.) The Proposed Order noted that the simple default service option permits the retail marketplace to develop the products demanded by consumers without the influence of arbitrary, artificial product designs. (P.O., p. 128.) The Proposed Order also noted that the IIEC has not shown the creation of another auction segment to be required. (*Id.*) Splitting the customers into small groups based on special customer characteristics and administering a separate procurement process for these customers would be neither practical nor wise. (Resp. Ex. 11.0 (revised), p. 22.)

IIEC claims that the Proposed Order should require the Ameren Companies to split off the 3+ MW customers because doing so would permit customers to fully benefit from the Proposed Order. In particular, IIEC claims that these Ameren Companies' customers must be split off to take full advantage of the bifurcated enrollment window, and the load prequalification process. This claim is unconvincing and confusing. The claimed benefits of these two programs (which the Ameren Companies do not endorse and which the Ameren Companies oppose) would not depend upon whether the 3+ MW customers are split into a separate auction segment. The 1 - 3 MW customers will benefit (if at all) from the 10 extra days in the enrollment window regardless of whether the 3+ MW customers are separated. Similarly, the perceived benefit (if any) of reduced bidder risk from permitting 3+ MW customers to prequalify their loads for the BGS-LFP auction product will exist even if the 3+ MW customers stay in the same auction segment as the 1-3 MW customers. Suggesting that the full benefit (if any) of these programs will not be achieved is not convincing and is not supported by the record. (*See* Section II.R, *infra.*)

In a similar vein, the Proposed Order protects bundled rate customers by determining that they would be defaulted to the BGS-LFP product if they do not chose a different supply in the enrollment period. (P.O., p. 205.) These important customer protections will exist whether or not the 3+ MW customers are split into a different auction segment. IIEC suggests – without any record support – that the 3+ MW customers will be harmed by these customer protections unless these large customers are split off into their own separate auction segment. IIEC does not point to any record evidence showing that bidders will "build an associated risk premium into their bid" with respect to the opt-out option. (IIEC BOE, p. 12.) Similarly, IIEC fails to cite to the record for support of the level of that premium (if any), and how such risk premiums associated with the opt-out option would affect the 3+ MW customers that pre qualify their load. (*Id.*) Such arguments are unsupported, unconvincing, and should be rejected.

The Proposed Order's rejection of the IIEC proposal is fully justified by the record in this proceeding. Whether implemented through a fully isolated RFP process, a separate auction, or through a new auction segment, the record does not support the separation of the 3+ MW customers into their own discrete group.

For the above reasons, the IIEC proposed exception regarding the separation of 3+ MW customers into a new auction section should be rejected.

M. Credit Requirements (Proposed Order Section V.L.2)

Reply to MWGen

The Proposed Order concludes that "[t]he Ameren Companies are not authorized to increase the credit requirements above the initial level authorized in this Order without prior Commission approval." (P.O., p. 163.) MWGen objects to the quoted language. (MWGen

BOE, p. 4.) MWGen states that the Ameren Companies should not be permitted to modify the terms of the SFC without the express consent of the supplier. (*Id.*)

It is not, and has not been, the Ameren Companies intention to raise the credit requirements of executed SFCs beyond that which existed when the SFC's were initially executed. For this reason, the Ameren Companies do not object to the removal of this sentence in so much as it relates to executed SFCs.

N. Payment Disputes (Proposed Order Section V.L.8)

Reply to MWGen

SFC § 9.3 sets forth a clear process for resolving payment disputes and for withholding payments in certain circumstances. Specifically, SFC § 9.3 allows either party to withhold from the other any disputed amount billed under the SFC. Under that section, billing disputes must be addressed promptly, and in accordance with the dispute resolution procedures set forth in the SFC. Upon resolution of a billing dispute, payment of any previously withheld amounts is to include simple interest on the payment at the "Interest Index" payable from the original due date. The Proposed Order properly adopted Section 9.3 of the proposed SFC.⁵ (P.O., p. 176.)

MWGen objects to this standard contract provision. MWGen instead requests that the SFCs "sanction" the Ameren Companies if the Ameren Companies "wrongfully" withhold a payment. (MWGen BOE, pp. 4-7.) Without any citation to the record, MWGen argues that the SFCs' interest rates applicable to withheld payments will not sufficiently "sanction" the Ameren

⁵ The ComEd Proposed Order properly concludes that SFC language permitting a party disputing a portion of a statement to withhold payment of the disputed portion is both necessary and appropriate. (ComEd Proposed Order, p. 155.)

Companies for "wrongful" withholding. (*Id.*) MWGen, of course, does not define "wrongful" in this context.⁶

The Proposed Order correctly rejects the MWGen proposal because the Commission is "bound to make decisions based on the evidence in the record." (P.O., p. 176.) The Proposed Order concluded that the issue appears to involve questions of fact. (*Id.*) MWGen claims that the issue does not require adjudication of any question of fact. Interestingly, MWGen then points to non-record factual "evidence" to support its factual claims. Namely, it claims that "interest rates below 5% ... will not accomplish this objective."⁷ (MWGen BOE, p. 6.) This statement, in turn, relies upon non-record factual "evidence" regarding the current and historic level of the Federal Funds Effective Rate. (*Id.*, p. 5.)

MWGen provides no citations to the record in support of the copious factual conclusions upon which its proposal relies. Among the many unsupported facts upon which it wants the Commission to rule are: (a) the Ameren Companies can force bidders into default if the Ameren Companies deem the SFCs to be disadvantageous; (b) that there is a need for any "sanction" whatsoever; (c) that the Prime Rate (as reflected in the Wall Street Journal) is the appropriate basis for determining interest payments; (d) that the 2% interest rate added to the Prime Rate is the appropriate interest rate for payment disputes resolved through arbitration; (e) that arbitration under the Rules of the American Arbitration Association for Commercial Disputes is the proper

⁶ MWGen's Brief on Exceptions suggests that the "sanction" would apply only when the Ameren Companies "wrongfully" withhold payment. However, MWGen's proposed SFC language contained in Exhibit B of the Brief on Exceptions does not create a sanction for "wrongful" action. As proposed by MWGen, the penalty would arise due to the process by which the dispute was resolved, not upon a finding of "wrongfulness". MWGen proposes a 2 % interest rate penalty for disputes that are resolved through arbitration. Resolving the dispute through arbitration cannot blindly be assumed to make a withholding "wrongful". Good faith disputes can be (and often are) resolved through arbitration or some other dispute resolution procedure. Failure to agree does not make one "wrongful."

⁷ On this subject, MWGen points only to the existence SFCs in Resp. Ex. 18.1 as the sole record evidence supporting its position.

basis for resolving disputes; and (f) those facts necessary to support the numerous other material modifications MWGen proposes for SFC Section 9.3, including the complete elimination of SFC Section 9.3(ii).

On a more substantive basis, the SFCs only permit a party to withhold payment if a "good faith dispute" exists. In such a circumstance, the withholding party must provide justification for the withholding and supporting documentation within 30 days. (Resp. Ex. 18.1 § 9.) MWGen's argument speciously assumes that the Ameren Companies will arbitrarily and capriciously withhold payments. The Ameren Companies do not intend to arbitrarily withhold payments. The SFCs encourage speedy, informal resolution of disputes.⁸ Moreover, the provision applies equally to the Ameren Companies and to suppliers, because the SFC allows either party to withhold a disputed payment when a good faith dispute exists, and so the provision does not favor any one party.

MWGen's proposal is impractical and unnecessary. For the above reasons, MWGen's exception with respect to the dispute resolution procedure and payment withholding process should be rejected.

O. Supplier Indemnification of The Ameren Companies Liability under Section 16-125 (Proposed Order Section V.L)

Reply to MWGen

Section 16-125 of the Act requires a utility to pay affected customers for actual damages, where more than 30,000 customers are affected for more than 4 hours or where transmission is at

⁸ SFC § 9.3(i) reads, in relevant part, "Billing disputes shall be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11." SFC Art. 11 reads, in part, "The Companies and the BGS-FP Supplier shall use good faith and reasonable commercial efforts to informally resolve all disputes arising out of the implementation of this Agreement within no more than thirty (30) days."

less than 50%, and for the replacement value of all goods damaged as a result of a power surge or other fluctuation affecting more than 30,000 customers. 220 ILCS 5/16-125(e), (f).

SFC § 14.1 provides for an indemnification of the Ameren Companies against liabilities caused by, or that occur as a result of, a BGS Supplier's acts or omissions. Specifically, SFC § 14.1(i) reads as follows:

(i) Should one or more of the Companies become the defendant in, or obligor for, any third party's claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, including, without limitation, damages as provided in Section 16-125 of the Illinois Public Utilities Act and implementing rules, that were caused by or occur as a result of an act or omission of the BGS-FP Supplier with respect to performance of an obligation arising under this Agreement, or for which the BGS-FP Supplier has otherwise assumed liability under the terms of this Agreement, the BGS-FP Supplier shall defend (at the Companies' option), indemnify and hold harmless the Companies, their shareholders, board members, directors, officers and employees and agents, from and against any and all such third party claims and/or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of a Company. The Companies may, at their own expense, retain counsel and participate in the defense of any such suit or action.

(Resp. Ex. 18.1 at § 14.1(i) (*pro forma* BGS-FP SFC) (emphasis added).)

MWGen objects to the SFCs' language providing for indemnification of the Ameren Companies' for liability under Section 16-125. (MWGen BOE at pp. 7-9.) MWGen argues that the Ameren Companies should not be allowed to shift or escape its liability under Section 16-125. (*Id.*) MWGen further objects to the Proposed Order's acceptance of the SFCs' indemnity language and inherent rejection MWGen's objections.

By not rejecting the proposed language, the Proposed Order accepted the SFC provision requiring that a supplier that is responsible for a supply failure indemnify the Ameren

Companies.⁹ The SFC language is appropriate, and is consistent with Section 16-125. The SFCs place the liability on the party that caused an outage or interruption through an act or omission. The SFCs do not shift liability. A supplier is responsible for Section 16-125 damages only when the supply failure was caused by, or occurs as a result of, an act or omission of the supplier. Under the SFCs' clear language, the Ameren Companies cannot receive indemnification for outages that were "caused wholly or in part by the gross negligence or willful misconduct of a Company."

The Ameren Companies and the Illinois consumers rely upon the BGS Suppliers to fulfill their obligations under the SFCs. The indemnity clause in question provides important protections and incentivizes suppliers to guard against such supply failures.

For the above reasons, MWGen's exception regarding the SFC's indemnification clause should be rejected.

P. "Customer Choice" Initiative (Proposed Order Section V.K.3)

Reply to DES/USESC

The Proposed Order declined to take any formal action regarding the DES/USESC's proposal that the Commission commence a "customer choice" initiative to identify and eliminate barriers to the implementation of a competitive electricity market for all consumers. (P.O., p. 149.) DES/USESC objects to this conclusion and seeks the implementation of a "customer choice" initiative in the form of ongoing collaboratives. (DES/USESC BOE, App. A, p. 8.) DES/USESC specifically recommends that the Commission require the Staff to "work with

⁹ The Proposed Order in the ComEd procurement case concludes that the SFC language providing an indemnity for supply failure is "both allowable under Section 16- 125 and is a reasonable manner for placing the burden for damages on the appropriate party." (Com Ed. Proposed Order, p. 156.)

interested parties to further develop the next steps necessary to advance competition in the electric industry in Illinois." (*Id.*) DES/USESC asks that the Commission require the Staff to issue recommendations by December 31, 2006, and every two years thereafter. DES/USESC also asks the Commission to direct staff to investigate advanced metering. (*Id.*)

DES/USESC's efforts to launch Customer Choice and advanced metering initiatives do not belong in this proceeding. This proceeding is focused on the Ameren Companies' proposal for acquiring power for the post-2006 era and the tariff revisions necessary to ensure cost recovery. With respect to the DES/USESC proposal, the Proposed Order noted that "a large number of very complex issues must be decided" in this proceeding. This one party's individual interests should not be allowed to bog down this proceeding.

The Ameren Companies share DES/USESC's interest in a vibrant retail electricity market. Like other entities, DES and USESC have the full opportunity to directly petition the Commission for the implementation of new "Customer Choice" initiatives and collaboratives.

Q. Rider MV - Enrollment Window (Proposed Order Section VII.B.4.a)

Reply to CES

CES takes issue with the Proposed Order's determination of the appropriate enrollment window. The Proposed Order recommended a 30-day enrollment window for customers with demands greater than 3 MW, and 40 days for customers with demands between 1 MW and 3 MW. Instead, CES recommends a 50-day enrollment window for the PPO and BGS-LFP rates for the initial enrollment period and a 45-day enrollment window in subsequent years. The principle reason given for the (now compromise) position by CES is that the "...30/40 day enrollment window does not provide customers and RESs with a sufficient amount of time to evaluate offers, negotiate and make...important decisions." (CES BOE, p. 5.)

Nothing new is offered by CES in terms of what already exists in the record, but what remains telling is their desire that the extended enrollment allow them to compete "...against the Ameren Companies' bundled rate." (*Id.*, p. 7.) Notably, the extended enrollment period will increase the price of the "Ameren bundled rate," thus allowing CES and other suppliers to benefit because their market price for power supply will not include this premium.

CES's claim that customers will not have enough time to implement and complete their decision making, especially customers of this size (greater than 1 MW), is unfounded. As we explained in our Brief on Exceptions, the notion that a 2 or 2-1/2 MW customer would need an extra ten days as compared to a 3 MW customer is difficult to accept. (Ameren Cos. BOE, p. 10.)

CES also disagrees with the Proposed Order's finding that the extended enrollment period results in an adverse impact upon price. (CES BOE, pp. 9-11.) CES takes issue with the Staff analysis, now labeling it a "theoretical model." (*Id.*, p. 10.) This should come as a surprise to Staff, and particularly to Dr. Eric Schlaf, who in his rebuttal testimony put forth an empirical analysis explaining the underlying assumptions and the basis for his conclusion that additional costs would be associated with the BGS-LFP product with an extended enrollment period. (ICC Staff Ex. 13.0, pp. 4-5.) In countering Dr. Schlaf's analysis, CES cites to the testimony of its witnesses who state that such theoretical premiums may be squeezed out and may not be reflected in the final prices bid into the wholesale auction. (CES BOE, p. 10.) These witnesses did not rebut Dr. Schlaf's findings, but instead sidestepped it entirely.

The fact remains that the longer the enrollment window, the greater the opportunity for switching, and this fact alone means that suppliers will take this into account when offering their bids.

R. Rider MV - Opt-In vs. Opt-Out and Other Switching Rules (Proposed Order Section VII.B.4.b)

Reply to IIEC

IIEC asserts there is confusion in the Proposed Order between its proposal that customers over 3 MW have a separate auction segment, Staff's "opt-out proposal," and the IIEC's pre-qualification proposal. Though its reasoning and discussion are not entirely clear, the IIEC appears to recommend changes to the Proposed Order on the grounds that if the Commission adopts Staff's opt-out proposal, the Commission should also adopt IIEC's recommendation for a separate auction product for customers 3 MW and greater to avoid losing the benefits of IIEC's pre-qualification proposal. (IIEC BOE, pp. 15-16.) However, IIEC appears to support Staff's opt-out proposal for customers with loads of less than 3 MW. (*Id.*)

IIEC's position remains unclear, and the Proposed Order did not consider it due to its late arrival as part of the IIEC Reply Brief. (P.O., p. 205.) However, regardless of the exact nature of IIEC's proposals, the Ameren Companies continue to oppose IIEC's proposed pre-qualification because it create unnecessary administrative hurdles (Ameren Cos. Reply Br., p. 46), and oppose a separate auction product for customers 3 MW or greater because it creates too many auction products. (Ameren Cos. Br., pp. 88-89; *see* Section II.L, *supra.*) Moreover, the "separate auction" issue for large customers remains a candidate for further attention with respect to future auctions. Notwithstanding whether the Commission accepts the pre-qualification proposal for customers 3 MW or greater, these customers should still be subject to Staff's opt-out proposal. (P.O., p. 204-05; ICC Staff Ex. 5.0, pp. 7-8.)

S. Rider MV - Migration Risk Factor (Proposed Order Section VII.B.6.a)

Reply to CES

CES asserts that the Proposed Order improperly failed to include a migration risk factor in the BGS-FP customer group translation tariff. (CES BOE, pp. 15-20.) The bulk of the argument is a rehash of CES' prior arguments and conclusory statements that the Proposed Order is wrong. CES also claims that IIEC supports their view. This will no doubt come as a surprise to IIEC. The Ameren Companies refer to their testimonies and other evidence as cited in the briefs supporting our recommendation that the Commission completely disregard a migration risk factor in this first auction. (Ameren Cos. Initial Br., pp. 130-131; Reply Br., pp. 88-89.)

III. CONCLUSION

WHEREFORE, for the reasons set forth herein, the Ameren Companies respectfully request that its recommendations above be adopted in this proceeding.

Dated: December 30, 2005

Respectfully submitted,

CENTRAL ILLINOIS LIGHT COMPANY
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CENTRAL ILLINOIS PUBLIC SERVICE
COMPANY d/b/a AmerenCIPS, and
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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, certify that on December 30, 2005, I served a copy of the foregoing Reply Brief on Exceptions of the Ameren Companies by electronic mail to the individuals on the Commission's official Service List for Consolidated Dockets 05-0160, 05-0161, and 05-0162.

/s/ Albert D. Sturtevant

Albert D. Sturtevant