

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Central Illinois Light Company	:	
d/b/a AmerenCILCO	:	
	:	05-0160
Central Illinois Public Service Company	:	
d/b/a AmerenCIPS	:	
	:	05-0161
Proposal to implement a competitive procurement	:	
process by establishing Rider BGS, Rider BGS-L,	:	
Rider RTP, Rider RTP-L, Rider D, and Rider MV.	:	
(Tariffs filed on February 28, 2005)	:	
Illinois Power Company d/b/a AmerenIP	:	
	:	05-0162
Proposal to implement a competitive procurement	:	
process by establishing Rider BGS, Rider BGS-L,	:	
Rider RTP, Rider RTP-L, Rider D, and Rider MV.	:	
(Tariffs filed on February 28, 2005)	:	(Consolidated)

**REPLY BRIEF ON EXCEPTIONS OF
CONSTELLATION ENERGY COMMODITIES GROUP, INC.**

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Dated: December 30, 2005

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**REPLY BRIEF ON EXCEPTIONS OF
CONSTELLATION ENERGY COMMODITIES GROUP, INC.**

Constellation Energy Commodities Group, Inc. (“CCG”) pursuant to Section 200.380 of the Illinois Commerce Commission Rules of Practice, 83 Ill. Adm. Code 200.830, respectfully submits this Reply Brief on Exceptions (“Reply”) in response to positions taken in the Brief on Exceptions filed by various parties to this proceeding on December 23, 2005. CCG stands by its Initial and Reply Briefs in this proceeding and failure to address any particular argument should not be considered an acceptance of that argument.

Specifically, CCG will respond to the following:

- I. Ameren's Proposal for Three Supplier Forward Contracts
- II. Prudency, (III. E. 3); and
- II. Three-day Post-Auction Commission Review of Results (V. L. 3.)

I.

**Ameren's Proposal for Three Separate SFC's does not
Provide Sufficient Detail**

Ameren, in its Brief on Exceptions in addressing the Proposed Order's conclusion on joint and several liability issues, alternatively proposed "that each utility be bound under a separate SFC." (Ameren Brief on Exceptions, p. 7). This is a new proposal without the benefit of testimony and cross-examination that lacks sufficient detail for a thorough analysis of the issues involved in executing three separate SFCs. For example, Ameren reiterated that "they intend to acquire power to meet the needs of the combined footprint of the Ameren Companies as a single block of Energy and Capacity," (*Id.*, p. 7). However, the details of how the power would be divided among the contracts to a successful bidder is not known. CCG therefore believes that Ameren's proposal cannot be supported without the benefit of testimony and without the opportunity for cross-examination.

II.

A Post-Auction Prudence Review Would Create Uncertainty (III. E. 3)

CCG has maintained throughout this proceeding in its Direct and Rebuttal Testimonies, as well as in its Initial and Reply Briefs, that in order to maximize auction participation and competitiveness among bidders, the Illinois Commerce Commission (“ICC”) must define the Post Auction Review Process in a way that maximizes certainty. (See, CCG’s Direct Testimony, p. 5, Rebuttal Testimony p. 2, Initial Brief, p. 16 and Reply Brief, pp. 5-7) The Proposed Order issued by Administrative Law Judge Jones on December 9, 2005 requiring an annual prudence review by the ICC under Section 9-220 of the Public Utilities Act (“Act”) (Proposed Order, pp. 76-80) creates potential uncertainty for auction participants in that it is unclear what, if any, a finding of imprudence would be on winning bidders’ rights, payments and obligations. This uncertainty will likely have a negative impact on bidders and discourage participation. It will also likely lead to a greater risk premium to account for the uncertainty.

As CCG has stated in its testimony, “by the conclusion of this proceeding, the Commission would have already done its most crucial review of the auction process and mechanics” (CCG Direct Testimony, p. 5). The competitive bidding for the procurement of power would only take place under the auction process approved by the ICC in this proceeding and purchases would only be made if the ICC certifies the results of the auction. An annual prudency review of an ICC

approved procurement process and ICC approved power purchase prices in advance of any purchases would only create uncertainty that, as noted above, could lead to diminished participation by bidders. In short, due to the intense ICC scrutiny afforded the proposed auction process in this proceeding, and the ICC's post auction review and approval of the results, an additional annual "prudence" review is simply unnecessary, highly inefficient and creates uncertainty. Regardless of the presumption of prudence afforded to Ameren, the annual process will undoubtedly result in challenges to the prudence of auction purchases that will serve no end but to create regulatory uncertainty for auction participants and, as a result, higher costs for Ameren ratepayers.

In the event the ICC approves an annual prudence review despite the concerns raised by CCG and others, two principles should be held inviolate. First, the Supplier Forward Contracts ("SFCs") that have been entered by Ameren prior to the prudence review must not be abrogated or revised in any way regardless of the outcome of that review. Second, the suppliers must be timely paid the resulting auction prices, again, regardless of the outcome of any prudence review. As previously stated, uncertainty increases risk that likely diminishes bidder participation and tends to increase prices.

Ameren, in its Exceptions to the Proposed Order, suggested language that would eliminate the prudence review in its entirety (Ameren Brief on Exceptions, p. 22) which CCG supports and urges the ICC to adopt those changes in its Order.

Staff of the ICC, in its Exceptions to the Proposed Order, stated that it “continues to believe that it would be appropriate to make a definitive prudence finding in this docket and that an after-the-fact prudence review is not necessary” (Staff Brief on Exceptions, p. 3), it nevertheless proposed alternative language to the Proposed Order with regard to the prudence review. While CCG believes that the prudency review suggested in the Proposed Order should be eliminated, in the event the ICC adopts the language on prudency as modified by Staff (Staff Brief on Exceptions, pp. 10-14)), or the language suggested in the Proposed Order, CCG suggests that the following underlined language be added:

3. Prudency

As explained above, Ameren, Staff and CCG contend that a review of the prudence of the auction process should take place in this docket, not in a post-auction prudency review proceeding. That is, if the process approved in this proceeding is followed in the auction, and the auction results are certified by the Commission at the conclusion of the three-day review period, then the acquisitions of supply made pursuant to the auction are deemed prudent and no “after-the-fact” prudency review is either necessary or appropriate.

Moreover, CCG expressed the concern that a prudency review creates regulatory uncertainty that could lead to diminished bidder participation and increased prices. CCG requests that in the event the ICC approves an annual prudency review that two principles must be held inviolate. First, the Supplier Forward Contracts (“SFCs”) that have been entered by Ameren prior to the prudency review must not be abrogated or revised in any way regardless of the outcome of that review. Second, the suppliers under the SFCs must be timely paid the resulting auction prices, again, regardless of the outcome of any prudency review.

As indicated above, if the auction results are approved by the Commission at the close of the three-day review period, then Ameren should be entitled to a presumption that the supply obtained pursuant thereto was “prudently purchased.” At the reconciliation proceedings, if Ameren shows that power purchases were made in accordance with the auction process, Ameren will be deemed to have made a prima facie showing of prudence within the meaning of Section 9-220.

The Commission wishes to assure bidders in the auction that any prudence review that may be undertaken will not impact the Supplier Forward Contracts executed by Ameren or any payment to suppliers under the Supplier Forward Contracts.

Whether the Commission is pre-empted by federal law from conducting a post-transaction review of auction purchases is addressed below.

III.

Three-day Post-Auction Commission Review of Results (V. L. 3.)

Although CCG continues to believe that the ICC should clarify the scope of the post-auction review by more narrowly defining the scope of such review, CCG nevertheless suggests that the following modifications be made to the Proposed Order not only for the three day review but for any subsequent prudence hearings that the ICC may hold.¹

Having reviewed the positions of the parties, the Commission concludes that the language by CCG and MSCG should not be adopted. While the review and subsequent prudence hearings, should focus on the issues cited by those parties, and not reopen or second guess the

¹ The modifications suggested by CCG in this case, are the suggestions that ComEd made in its Reply Brief on Exceptions in Docket No. 05-0159, p. 26 which CCG supports.

decisions made here, the Commission agrees with other parties that the restrictiveness of the language would deprive the Commission of needed flexibility. Furthermore, the brevity of the Commission's review period, consisting of three working days, should help alleviate the alleged risks, and MSCG offered no prepared testimony to the contrary.

Conclusion

Constellation Energy Commodities Group, Inc. respectfully requests that the Illinois Commerce Commission adopt the modifications to the Proposed Order of December 9, 2005 suggested herein.

Respectfully submitted,

**CONSTELLATION ENERGY COMMODITIES
GROUP, INC.**

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