

<b>Central Illinois Light Company d/b/a AmerenCILCO,</b>	:	
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	:	<b>No.05-0160</b>
<b>Proposal to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV</b>	:	
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<b>Central Illinois Public Service Company d/b/a AmerenCIPS</b>	:	<b>No. 05-0161</b>
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<b>Proposal to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV</b>	:	
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<b>Illinois Power Company d/b/a AmerenIP</b>	:	<b>No. 05-0162</b>
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<b>Proposal to implement a competitive procurement process by establishing Rider BGS, Rider BGS-L, Rider RTP, Rider RTP-L, Rider D, and Rider MV</b>	:	<b>(Consol.)</b>
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**APPLICATION FOR REHEARING OF  
THE COALITION OF ENERGY SUPPLIERS**

Constellation NewEnergy, Inc., Direct Energy Services, LLC, MidAmerican Energy Company, Peoples Energy Services Corporation, and U.S. Energy Savings Corp. (collectively, the “Coalition of Energy Suppliers,” “Coalition,” or “CES”), by their attorneys DLA Piper Rudnick Gray Cary US LLP, pursuant to Section 10-113 of the Public Utilities Act (the “Act”) and Section 200.880 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), hereby submit the Coalition’s Application for Rehearing<sup>1</sup> of the Order entered by the Commission on January 24, 2006 (“Order”) in the above-referenced matter.

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<sup>1</sup> The positions set forth herein represent the positions of the Coalition as a group, but do not necessarily represent the positions of individual CES member companies.

Although the Coalition generally commends the Commission for adopting an Order that properly addresses many of the issues central to this proceeding, the Commission should take an important additional step to put an end one of Ameren's most clearly anticompetitive policies. Specifically, the Commission should direct Ameren to adopt the customer grouping approach approved by the Commission in ICC Docket No. 05-0159, the procurement proceeding involving Commonwealth Edison Company ("ComEd"). Such an approach will be consistent with the Commission's desire to bring greater uniformity to the wholesale procurement plans of Ameren and ComEd. (*See* Order at 121, 123, 158-60; ICC Docket No. 05-0159, Order at 121.)

The Commission should revisit the composition of the auction products in the Ameren service territories, considering the negative impact that the customer grouping approach adopted by the Order will have upon the development of competition in the Ameren service territories. Ameren has, predictably, demonstrated throughout the instant proceeding a reluctance to support a customer grouping structure that will support the development of robust competition. (*See* Ameren BOE at 15; CES Init. Br. at 28-37; CES Reply Br. at 18-20; CES BOE at 12; CES RBOE at 10-11; Oral Arg. Tr. at 1757-59.) In keeping with the Commission's stated desire for greater uniformity between the structure of the wholesale auctions for ComEd and Ameren, and the Commission's statutory mandate to promote competition, the Commission should not tolerate Ameren's recalcitrance.

**AMEREN'S CUSTOMER CLASS STRUCTURE  
SHOULD BE REVISED TO MIRROR THE  
CUSTOMER GROUPINGS APPROVED FOR COMED**

It is uncontroverted that the customer groupings endorsed in the Order will result in residential customers subsidizing businesses in the Ameren service territories. (*See* CES Init. Br. at 29.) The Commission wisely avoided this result in the ComEd procurement proceeding by adopting ComEd's revised customer groupings. (*See* ICC Docket No 05-0159, Order at 124.) Unfortunately, Ameren refused to revise its customer groupings, and the Order adopted Ameren's proposal to lump together all residential and commercial customers with demands less than 1 MW.

The Coalition had proposed that Ameren's customer groupings be revised to include the 400 kW to 1 MW customer group with those customers over 1 MW in the BGS-LFP annual product auction. (*See* CES Init. Br. at 28-37; CES Reply Br. at 18-20; CES BOE at 15; CES RBOE at 9-11; Oral Arg. Tr. at 1640-41.) The primary reason for splitting apart the 400 kW to 1 MW customers is that those customers have a greater propensity to switch than the smallest commercial and residential customers.<sup>2</sup> This greater propensity to switch will translate directly into higher prices being bid by wholesale suppliers. (*See* CES BOE at 17-19.) ComEd recognized this reality and revised its proposal to insulate residential customers from the higher prices that suppliers would bid to supply the larger customers.<sup>3</sup>

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<sup>2</sup> The unrefuted record evidence demonstrates that customers with peak demands of over 400 kW have shown a considerably greater propensity to switch suppliers than have those below that level. (*See* CES Ex. 1.0 at lines 344-46; CES Init. Br. at 25-27.) For example, at the end of calendar year 2004, in the ComEd service territory, 63% of all load in the 400 kW to 1 MW group was on RES, PPO, and ISS service, whereas the rate for this group of customers in the Ameren service territories was just shy of 23%. (*See* CES Ex. 4.0 at lines 575-77.) Similarly, of the 1 to 3 MW customers in ComEd's service territory, 71.8% were at the time of the testimony served by competitive supply. (*See id.* at lines 618-25.) Ameren has admitted that these figures for ComEd should be similar to those achieved in the Ameren service territories following the monthly transition period. (*See* Tr. At 1760-61.)

<sup>3</sup> (*See* ComEd Ex. 18 at lines 509-49.) Not surprisingly, the Citizens Utility Board and the Cook County State's Attorney's Office endorsed ComEd's revised grouping: "Given that these larger customers are more likely to migrate than smaller ones, based upon historical data, wholesale bidders in the [blended product] auction will

Although the Commission acknowledged that the Coalition made “strong arguments in favor of its proposal that deserve close consideration” the Order nevertheless failed to adopt the Coalition’s proposal, and in doing so, adopted customer groupings for Ameren different than those the Commission adopted by the Commission for ComEd. (Order at 132.)

Unfortunately, the Order does not directly address the merits of the Coalition proposal or provide any clear reason for declining to adopt it.<sup>4</sup> While Ameren maintained that it could not adopt the Coalition’s proposal because Ameren has failed to install time-of-use metering for commercial customers with peak demands of 400 kW to 1 MW, it is unclear whether this served as a basis for the Commission’s decision. (See Order at 132-33.) As Ameren stated in oral argument, because suppliers will not have that data, “suppliers would be guessing” about the load profile of these customers. (Tr. at 1758.) Thus, it appears that the Commission may have accepted Ameren’s self-serving assertion as a reason for rejecting the Coalition’s proposal.<sup>5</sup>

However, Ameren failed to acknowledge that the suppliers are going to have to be “guessing” in any event, regardless of whether the 400 kW to 1 MW customers are lumped in

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include some extra risk premium in their bids beyond that justified for the smaller customers. This creates some risk that such a premium will not be fully eliminated from the default rate for those smaller customers. Moving them into their own auction or combining them with the proposed [annual] auction would eliminate that risk.” ICC Docket No. 05-0159, CUB-CCSAO Ex. 4.0 at 58, lines 1327-32.

<sup>4</sup> In the face of direct questioning, Ameren obstinately stood by its position that the lack of metering hindered competition but that the Commission had not required Ameren to install such metering. Ameren responded that interval metering had not been installed because “there is no obligation on the utility’s part to install interval meters [for 400kW to 1 MW customers].” (Tr. at 1758.) Ameren’s unwillingness to voluntarily install such metering during the mandatory transition period should inform the Commission’s consideration of the instant Application for Rehearing.

<sup>5</sup> Ameren’s position is troubling: the Company admits that it declined to take the straightforward step of installing interval metering because the Commission has not ordered it to do so. The Company now takes advantage of its own inaction as an excuse to avoid pro-competitive customer groupings. Ameren’s position is also revealing: the Company now effectively has told the Commission it will not take pro-competitive action unless forced to do so by Commission order. The proper remedy, consistent with the Act, is for the Commission to order Ameren to take pro-competitive actions rather than allow the Company to continue to stifle competition.

with residential customers. The question is whether the suppliers' guess should impact the bid that they will be submitting for residential and the smallest commercial customers.

The Coalition explained that Ameren's failure to install interval meters should not be determinative of whether the Commission orders Ameren to adopt the Coalition proposal to protect residential customers. (*See* CES BOE at 13.) There are other "proxies" that the wholesale suppliers can use in the absence of historic data. Specifically, the Coalition explained that the best proxy likely is the 400 kW to 1 MW customer group in the ComEd service territory. (*See id.*; CES Init. Br. at 31.) Ameren asserted – without providing any proof – that commercial customers in its service territories might have a different load profile than those in ComEd's service territory.<sup>6</sup>

The Coalition explained that following the transition period, Ameren's bundled prices are likely to be more in line with ComEd's bundled prices, making them more likely to be supplied by RESs. Coalition witness Dr. O'Connor explained that following the transition period, Ameren's 400 kW to 1 MW customers are likely to have switching levels equal to similarly-sized customers in the ComEd service territory. (*See* CES Ex. 4.0 at lines 630-35.)

At oral argument, Ameren admitted that the change in pricing methodology should bring the level of switching for Ameren customers in line with ComEd. In response to criticisms that competition has not yet developed in the Ameren service territories, Ameren asserted: "The reason why there has not been much switching in the Ameren service territories is because of their rates. Their rates are low. They're low relative to Commonwealth Edison rates." (Tr. at 1760.) Ameren predicted that, "You will see customer switching hopefully once this auction is approved and we have in effect market prices in our rates. . . . you'll see switching because

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<sup>6</sup> Of course, the reason that Ameren did not have proof was because it failed to install the time-of-use meters for those customers.

everyone will be competing basically at the same price.” (*Id.* at 1760-61.) Thus, Ameren has admitted that data regarding ComEd’s historic switching levels actually provide *better* information than Ameren’s own historic data.

Of course, under the Ameren proposal adopted in the Order, commercial customers with demands between 400 kW to 1 MW will not see prices similar to similarly-sized customers in the ComEd service territory. Instead, those commercial customers in the Ameren service territories will see prices that are subsidized by residential customers. Indeed, under the Ameren proposal adopted in the Order, those commercial customers will not even see the same product as their ComEd counterparts – Ameren will offer them a blended product; ComEd will offer them an annual product. This cross-subsidization and lack of uniformity will continue to frustrate the development of competition in the Ameren service territories.

The Coalition’s proposal is simply that the 400 kW to 1 MW customers be combined with the over-1 MW customer grouping, mirroring the structure adopted for ComEd. The Commission has made it clear through its Orders in both of the procurement proceedings that it values uniformity between the structure and products of the respective ComEd and Ameren auctions. In the instant proceeding, the Commission adopted many proposals in the Order that mirrored those adopted in the ComEd proceeding, acknowledging the benefits of uniformity. (*See, e.g.*, Order at 123 (adopting uniform auction commencement date); Order at 158-60 (adopting uniform Supplier Forward Contracts; Order at 213 (adopting uniform enrollment periods).) Even Ameren witness Blessing had to acknowledge the benefits of such uniformity, explaining that the more similar the Ameren and ComEd products are, the more likely suppliers are to switch between the ComEd and Ameren auctions, making the auctions more liquid, and likely yielding lower prices. (*See* Tr. at 469; Ameren Ex. 10.0 at lines 44-65.)

Similarly, in the Final Order in ICC Docket No. 05-0159, the Commission adopted an annually-revised portfolio of three-year supply contracts identical to the blended, fixed-price portfolio adopted by the Commission in the Ameren procurement dockets and concluded that doing so “furthers the goal of achieving uniformity across the ComEd and Ameren auctions.” (ICC Docket No. 05-0159, Order at 121.) Such uniformity will not exist – indeed, cannot exist -- unless the Commission revises the Order in the instant proceeding. Consistent with the Commission’s goal of encouraging uniformity in the procurement processes, the Commission should revise Ameren’s customer groupings to mirror those the Commission adopted for ComEd.

Instead of adopting the Coalition’s reasonable customer grouping proposal, which would result in the kind of uniformity that the Commission appropriately has endorsed, the Order allows Ameren to resist adopting a customer grouping structure similar to that of ComEd, suggesting that the Commission will revisit this issue once Ameren has installed proper interval metering within its service area. (*See* Order at 132.)

Characteristically, even on the issue of installation of interval meters, Ameren has exhibited a mindset of delay. Prior to the issuance of the Commission’s Order, Ameren essentially warned the Commission that even after the two (2) year installation period mandated by the Order, Ameren *still* will not be in a position to deal with a 400 kW to 1 MW product in the auction process. (*See* Ameren BOE at 15.) Thus, not only has Ameren used the lack of interval metering to justify its resistance to appropriate customer groupings, but now, even when provided with a two (2) year reprieve on this issue, Ameren claims that it still will not be ready to properly group its customers.

Ameren should not be rewarded for its failure to install adequate metering during the mandatory transition period, especially when it now states that even *with* interval metering, it will not be able to deal with the customer grouping issue. (*See id.*) The Commission should revisit the Coalition’s “strong arguments” and put an end to this effort of Ameren to frustrate the development of a competitive retail electric market in the Ameren service territories. (Order at 132.)

To promote the development of the retail electric market throughout Illinois and to further the Commission’s goal of statewide uniformity, the Coalition respectfully requests that the Commission revise the Order and direct Ameren to revise its customer groupings to mirror those endorsed by the Order in the ComEd procurement proceeding. Specifically, the Commission should order Ameren to include the 400 kW to 1 MW customer group with those customers over 1 MW in the BGS-LFP annual product auction.

WHEREFORE, the Coalition respectfully requests that the Commission enter an Order consistent with the Coalition’s consistent position in both the instant proceeding and the ComEd procurement proceeding (ICC Docket No. 05-0159) and require that Ameren adopt a structure of customer groupings mirroring that adopted in the ComEd procurement proceeding and set forth and explained in the Coalition’s Initial Brief, Reply Brief, Brief on Exceptions, Reply Brief on Exceptions, and the instant Application for Rehearing.

Respectfully submitted,

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